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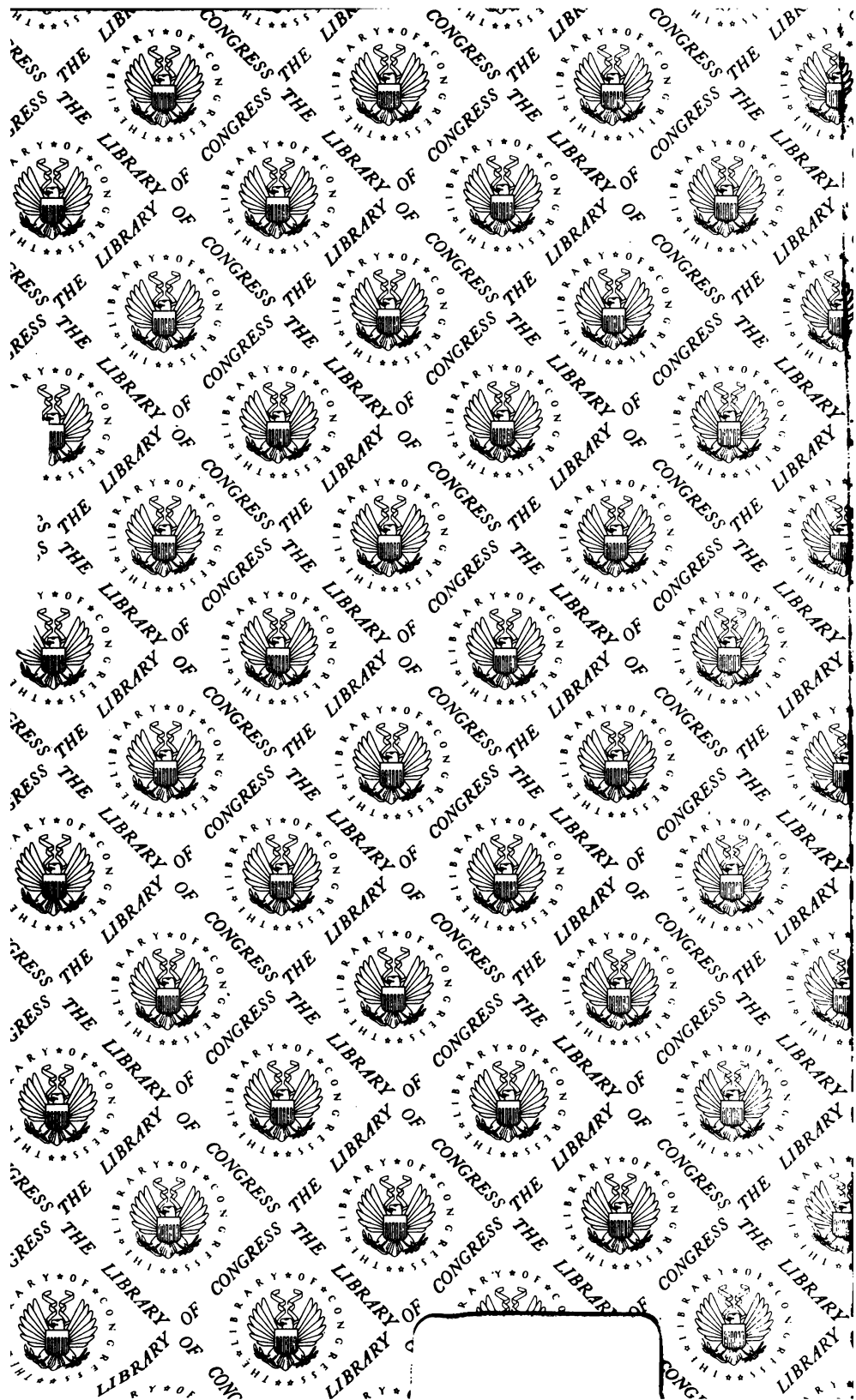
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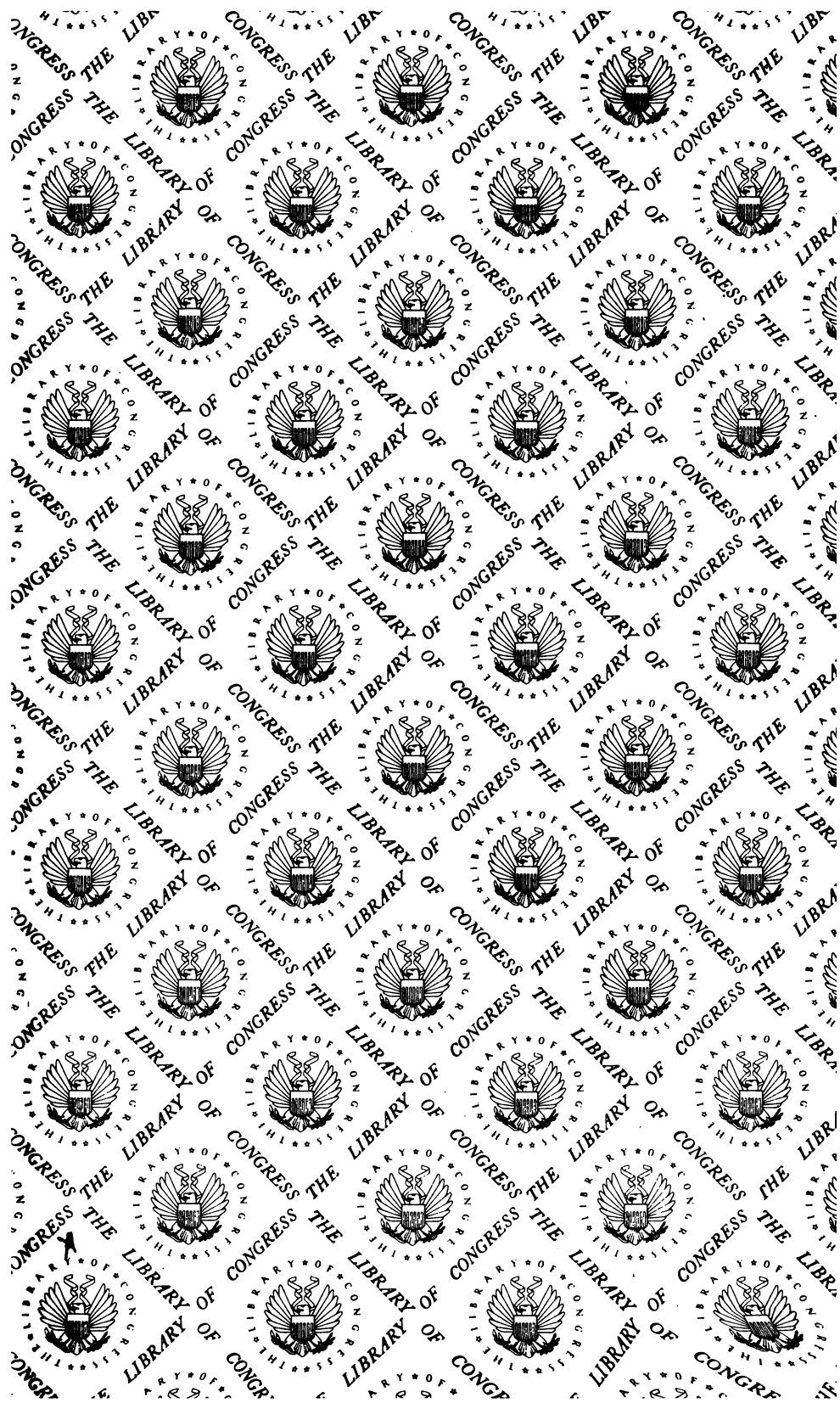
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ORIGINAL EXECUTIVE SECRETARIAT MATTER

HEARINGS

BEFORE

SUBCOMMITTEE OF THE COMMITTEE
OF THE UNITED STATES SENATE

IN THE MATTER OF THE
NOMINATION OF

OSCAR R. HUNDLEY

TO BE UNITED STATES DISTRICT
JUDGE FOR THE NORTHERN
DISTRICT OF ALABAMA

SUBCOMMITTEE

SENATOR DILLINGHAM, CHAIRMAN

SENATOR KNOX

SENATOR BACON

SENATOR KITTREDGE

SENATOR CLARKE, of Arkansas

WASHINGTON
GOVERNMENT PRINTING OFFICE

1908

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(CONFIDENTIAL. EXECUTIVE SESSION MATTER.)

HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON THE
JUDICIARY OF THE UNITED STATES SENATE IN THE MATTER OF THE
NOMINATION OF OSCAR R. HUNDLEY TO BE JUDGE OF THE UNITED
STATES COURT FOR THE NORTHERN DISTRICT OF ALABAMA.

WASHINGTON, D. C., *February 7, 1908.*

The subcommittee met at 10 o'clock a. m.

Present, Senators Dillingham (chairman), Bacon, and Clarke, of Arkansas.

Also, Senators Bankhead and Johnston and Representatives Burnett, Clayton, Craig, Heflin, Richardson, and Underwood, of Alabama.

Senator DILLINGHAM. Is there any question about the order in which those who have been invited to come here shall be heard?

Representative RICHARDSON. We will state the names.

Senator DILLINGHAM. The first name on the list which I have here is that of Mr. Adler, of Birmingham.

Representative RICHARDSON. We will call Mr. Benner's first.

Senator DILLINGHAM. Very well.

Representative RICHARDSON. It is suggested to me, Mr. Chairman, whether it would be desirable for the gentlemen who appeared here on a former occasion, six Representatives from Alabama, to repeat what they stated at a prior meeting.

Senator CLARKE, of Arkansas. I think that ought to be done, in view of the fact that it was not taken down then.

Senator BACON. The whole thing.

Senator CLARKE, of Arkansas. We want the record for the whole committee, and possibly for the Senate.

Representative RICHARDSON. We are perfectly willing to do that.

Senator CLARKE, of Arkansas. It would be agreeable to the committee, if the Representatives choose to do it. It forms a necessary part of the record. However, there is no compulsion about it.

Representative CLAYTON. I was responsible for the suggestion which Judge Richardson made just now. But it occurs to me since then that there are quite a number of gentlemen here from Alabama who are anxious to get back home as early as possible, while the Representatives in Congress are here all the time. If we were to take up the time of the committee to-day in making our statements, which I suppose will be fully as extensive as they were the other day when we appeared before you, it would consume so much time that it might keep these witnesses here unnecessarily long. While the suggestion may be subject to a little criticism, perhaps on the ground

of irregularity in procedure, it has occurred to me that possibly the original suggestion is the better one—that we call in the first one of the witnesses from Alabama and hear him. I say that for the reason that the committee is familiar with the nature of the charges or the reasons why Judge Hundley should not be confirmed, and those Representatives in Congress who are opposed to Judge Hundley's confirmation will take pleasure in repeating, so that it may go into the record, what they have heretofore said.

Senator DILLINGHAM. You would have them called first, so as to accommodate them about returning home?

Representative CLAYTON. That has occurred to me since.

Senator DILLINGHAM. I think that, perhaps, would be the better way.

Representative RICHARDSON. I think that is decidedly advisable.

Senator DILLINGHAM. Then we will call Mr. Benners first.

STATEMENT OF AUGUSTUS BENNERS.

Mr. Augustus Benners appeared before the committee.

Representative CLAYTON. State your residence and occupation.

Mr. BENNERS. I am a lawyer, and live in Birmingham, Ala.

Senator DILLINGHAM. The question which has been referred to the subcommittee is that of the confirmation of Judge Hundley, and we shall be glad to receive from you any information bearing upon the subject.

Mr. BENNERS. The matter with which I am familiar is the bankruptcy case of the Southern Steel Company. Our law firm was employed to conduct the bankruptcy litigation over the Southern Steel Company. In that connection we filed a petition in bankruptcy and a petition to have receivers appointed. Certain large creditors of the Southern Steel Company and certain parties interested in the Southern Steel Company as stockholders had had negotiations with a firm known as Adler & Co., in Birmingham, with reference to furnishing them necessary money to finance the receivership. Adler & Co. had agreed, in the event they were appointed receivers, so that they would have the disposition and handling of the money, that they would put up the amount of money necessary to carry on the business of the corporation.

I went to Huntsville with Mr. Hood, the attorney for the corporation, and met Judge Hundley by appointment at his chambers. I presented to him the petition in bankruptcy and the petition for receivers. The ground of bankruptcy charged in the petition was that the corporation had admitted in writing its inability to pay its debts and its willingness to be adjudged a bankrupt. That is the fifth ground of bankruptcy, and, as the books say, is in effect a method by which a corporation may accomplish voluntary bankruptcy. The petition averred that this writing was in the nature of a letter of the same date as the petition itself, addressed to one of the petitioning creditors.

I mention this as bearing on the subject of collusion between the petitioning creditors and the bankrupt, which I understand will be set up defensively to what we have to say. That was the procedure

adopted in this case, and it was, as a matter of course, done with the full knowledge and consent of the corporation, with the expectation that it would thereupon be put into bankruptcy. I stated to Judge Hundley who the two Adlers were whom we suggested for receivers.

The two Adlers were Morris, who is present here as a witness, and his brother. I stated—and these are facts—that they were men in that community of excellent reputations; that they were men of large means, and at that time possessed a large amount of cash. They had on deposit several hundred thousand dollars. At that time the banks in Birmingham, as I judge elsewhere, were unable to make any loans at all to individuals on any security.

Representative BURNETT. What was the date of that?

Mr. BENNERS. October 24 last.

I presented to Judge Hundley letters from the two principal banks in Birmingham, the First National Bank and the Birmingham Trust and Savings Company, stating the qualifications of the Adlers, stating that they had themselves sold out their interest in another large similar corporation, and had a large amount of money; that they had been very successful in the operation of this other corporation; that they had the confidence of the business community; and that they were men of good business character and integrity.

As you will discover, they are Jews. The fact remains with reference to their standing as I have stated it. I have copies of the papers to which I shall refer. Of course, I understand the committee does not care to have them read. If the committee desires, I will hand it the papers to which I refer, including copies of the letters.

Senator DILLINGHAM. That had better be done, I think.

Senator BACON. Yes. You might as concisely as possible state their substance, in order that we may properly apply what you say with reference to them.

Mr. BENNERS. I hand the committee a copy of a letter from the Birmingham Trust and Savings Company, addressed to Judge Hundley, being one of the two letters which I then presented to him.

The letter is as follows:

BIRMINGHAM TRUST AND SAVINGS COMPANY,
Birmingham, Ala., October 24, 1907.

HON. OSCAR R. HUNDLEY.

District Judge, Huntsville, Ala.

MY DEAR SIR: I understand that application will be made to you for a receiver for the Southern Steel Company, and that Messrs. Morris and Edgar L. Adler will be suggested for receivers.

These gentlemen have been successful in handling large coal and iron properties in this district and have the confidence of our entire business community. They are gentlemen of considerable means, and I believe would give entire satisfaction to the parties in interest, as well as inspire public confidence.

Yours, truly,

A. W. SMITH, *President.*

Representative BURNETT. That was from a responsible bank and a bank of large means?

Mr. BENNERS. Yes, sir. It is the second largest bank in Birmingham. The principal bank is the First National Bank, from which I also had a similar letter which I presented. Those two banks also

sent him telegrams. The telegram from the First National Bank is as follows:

[Telegram.]

OCTOBER 25, 1907.

Judge O. R. HUNDLEY,
Huntsville, Ala.:

Absolutely necessary to continue Southern Steel Company plants in operation to prevent heavy loss to creditors. Strongly urge appointment of Adlers as receivers. Their experience fully qualifies them to handle property and they have financial ability to supply necessary funds for operation. No other parties here can do this, as banks will not finance company even under protection of court.

W. P. G. HARDING, *President.*

Paid: Charge First National Bank.

Representative BURNETT. This is from the First National Bank, the largest bank in Birmingham?

Mr. BENNERS. Yes. It has assets of approximately \$10,000,000. It is easily the largest in Birmingham. The other company has assets of about \$5,000,000, and is the second bank in Birmingham. It telegraphed Judge Hundley as follows:

[Telegram.]

OCTOBER 25, 1907.

Hon O. R. HUNDLEY,
Huntsville, Ala.:

It is the interest of the community to continue the operations of the Southern Steel Company pending arrangements with creditors. It is absolutely necessary that the Adlers be appointed receivers, as they are competent to run the plant and are financially capable of financing it. The banks would be unwilling to do this. The interest of the entire district demands the appointment of strong men able to supply funds immediately to pay labor. They have the entire confidence of the business community.

T. O. SMITH,
President Birmingham Trust and Savings Co.

Both of those banks were unsecured creditors, and in addition held a large amount of paper from their customers as collateral. So they were vitally interested as creditors in the proper administration of this estate.

The Southern Steel Company had property of about the value of \$10,000,000, situated in Alabama, Tennessee, and Georgia, consisting of steel mills, wire and rod mills, furnaces, and coal and iron mines. All of this property is very heavily encumbered. So the only hope of the creditors realizing anything was in the event that the stockholders should find it to their financial interest to reorganize it. That position has always been taken by the creditors.

In response to my recommendation of the Adlers, Judge Hundley stated that the same representation as to ability to finance the corporation had been made to him with reference to other gentlemen, and that he had in writing the statement of a bank, with a million dollars of assets, that it would lend a sufficient sum of money to finance the receivership.

This conference occurred at his chambers. There was present throughout it Mr. E. G. Chandler, who was subsequently appointed a receiver. No mention was made of him during the conference, and I may state it never entered anybody's head at the conference that Mr. Chandler would be appointed a receiver.

Judge Hundley heard us rather impatiently, and finally rose, after a ten or fifteen minute conversation, and stated that he would an-

nounce his appointment from the bench in the court room, the court being then in session, at 11 o'clock. In announcing his appointment he stated that he would appoint one of the Adlers, understanding they had ability in the operation of this class of property; that he understood that the concern had commissaries, and that he would, therefore, appoint Mr. Elijah G. Chandler a coreceiver on account of his experience in the operation of commissaries. The commissary business of the Southern Steel Company is insignificant in comparison with its entire business, being nothing but its company stores, which operate at the plants. He said in the third place the court wanted a representative of its own, and knowing Mr. Joseph O. Thompson to be a man of high character he would appoint him as third receiver. The appointment of Chandler and Thompson as a majority of the board of receivers, or their appointment at all, I may say, created the greatest consternation among financial men in the Birmingham district, so much so that pressure was brought to bear on Judge Hundley—

Representative BURNETT. Who were Thompson and Chandler?

Mr. BENNERS. Chandler is the proprietor of two retail stores, called commissaries, in Birmingham, having a stock of merchandise not exceeding \$15,000 in value. He has never been in any other business so far as I know. He is not a man who has ever handled large affairs of any kind.

Mr. Thompson is the collector of internal revenue there, and has been a planter, as I am advised. Judge Hundley lived in the same house with Mr. Chandler.

As I said, the appointment of these men created consternation among financial interests in Birmingham. Pressure was brought to bear on him to get him to make some declaration as to his future course with reference to the appointment of receivers of industrial corporations.

I hand the committee a card in the Birmingham News of November 1, 1907, as to these appointments, in which he declares that he will appoint receivers of industrial corporations only on notice.

The article referred to is as follows:

[Special to the Birmingham News.]

JUDGE HUNDLEY DECLARES HE WILL ACT WITH CAUTION.

HUNTSVILLE, ALA., November 1, 1907.

Judge Oscar R. Hundley, of the United States court for the northern district of Alabama, Friday issued the following statement:

"Reliable information comes to me that owing to the financial stringency and the methods employed by the banks of Birmingham to relieve the financial situation many corporations and individuals may probably be unable temporarily to meet their obligations.

"Further information comes to me from reliable sources that there is a probability on account of this situation that petitions for involuntary bankruptcy will be filed in my court requesting the appointment of receivers in bankruptcy.

"I deem it not improper for me at this critical moment to assure the public that no application for receivers in bankruptcy will be granted by me until after a due and timely notice to all parties in interest and after a patient hearing and convincing proof that the appointment of such receiver will best conserve all interests.

"OSCAR R. HUNDLEY,
"United States District Judge."

Mr. BENNERS. It may be stated in conclusion——

Senator BACON. Pardon me a moment. You have presented what you say is Judge Hundley's reply. Was the point to which pressure was directed the point whether he would have notice or not, or was there something else as to which those who were interested thought it well to get an expression from him?

Mr. BENNERS. As a matter of course, Senator, the object was, in any event, to have an opportunity to appear before him and protest against the appointment of men without experience and totally unqualified to manage the affairs of a corporation of that character.

Representative BURNETT. Did you communicate to Judge Hundley the ability of these men?

Mr. BENNERS. Very fully; as fully as he would permit me.

Representative CLAYTON. Before you go onto that, did not the action of Judge Hundley in the case of the Southern Steel Company, which you say created consternation, also create an apprehension generally that the corporations there which were under any sort of financial embarrassment on account of the money stringency would in all probability be put into receivers' hands?

Mr. BENNERS. Yes.

Representative CLAYTON. By the judge?

Mr. BENNERS. Yes.

Representative CLAYTON. The business community really feared action on his part?

Mr. BENNERS. Receiverships with us have never been a matter of political patronage. The public, without exception, put the construction on Judge Hundley's action in this case, that it was a personal and political appointment. That was the universal view of the public, without exception, and many men of substantial interests with whom I discussed the matter said that it was but one step from the appointment of political and personal friends to the creation of receiverships for the purpose of making such appointments.

Representative RICHARDSON. Mr. Thompson was the political referee down there?

Mr. BENNERS. Yes, sir; as I understand, he is one of the President's advisers with reference to appointments in Alabama; and, as I believe the committee was advised, his appointment was in violation of the Federal statute which forbids the appointment of a Federal officeholder to a Federal receivership.

Immediately two courses were undertaken, one by the parties interested in the corporation, to bring on an election of trustees and oust these receivers, and another on the part of Judge Hundley, to justify his action. He immediately inaugurated an attack on the Adlers, which he has kept up until this day, and all the proceedings from that day to this have been a mass of intrigue and chicane—I say that deliberately—with a view on the part of Judge Hundley of justifying his action.

The first step was to cause the filing by Chandler and Thompson of a petition directed against Adler, in which they asked his removal. This was done about five days after the original appointment. The grounds alleged in that petition, of which I present the committee a copy, are that harmony does not exist among the receivers; that Adler had declined to make a joint bond with the two other receivers. He did that on my advice. The bond was \$300,000. He

was amply able to make a bond. There is nothing in the decree which forbade him making a separate bond, or which required a joint bond, and I advised him not to make the bond for Thompson and Chandler.

They alleged that in this petition as a ground for his removal. No creditor joined in that petition. No party having a dollar in the corporation appeared to prosecute it or desired its prosecution, so far as I am advised.

I herewith present the petition of the two receivers.

In re Southern Steel Company, in bankruptcy.

HON. OSCAR R. HUNDLEY,

Judge of the District Court of the Northern District of Alabama.

Your receivers, Joseph O. Thompson and Elijah G. Chandler, respectfully report and show unto your honor that heretofore they, together with Edgar L. Adler, were appointed by your honor receivers in bankruptcy of the Southern Steel Company, under petitions filed in the southern division of the said northern district and in the eastern division of the said northern district, that the said Thompson and the said Chandler executed a joint bond in the penal sum required by your honor's orders before entering upon the discharge of their duties as receivers; and that the said Edgar L. Adler executed a separate bond as receiver, and the said three receivers thereupon qualified as receivers. Your receivers, first above named, state that there has not been that unity of action or cooperation between the three receivers which is necessary in order to raise the moneys required to operate the large plants belonging to the said Southern Steel Company, the operation of which was ordered to be continued by your honor's decree; and they therefore report to your honor that, in their opinion, the said plants can not be operated, and the moneys necessary to operate them, procured by the said receivers, so long as the personnel of the receivership remains as at present constituted.

Therefore, as officers of this court, charged with large responsibilities by virtue of their appointment, they deem it proper to bring the said matter to the attention of this court, to the end that such action may be taken and such orders made by your honor as, in your honor's judgment, should be taken and had under the facts presented; and to the end that the best interests of the trust committed to the charge of the receivers and of the parties in interest may be best subserved.

Respectfully submitted.

JOSEPH O. THOMPSON.
ELIJAH G. CHANDLER.

To EDGAR L. ADLER, Esq.

Please take notice that the foregoing report has been filed and will be presented to the Hon. Oscar R. Hundley, at chambers, at Huntsville, Ala., at 12 o'clock noon on October 31, 1907, for such action as is deemed proper in the premises. You are respectfully requested to be present and advise with the court at said time.

JOSEPH O. THOMPSON.
ELIJAH G. CHANDLER.

BIRMINGHAM, ALA., October 30, 1907.

A copy of the within was this day handed Edgar L. Adler, esq., and a copy handed Augustus Benners, esq., of counsel for the petitioning creditors, upon this 30th day of October, 1907.

FORNEY JOHNSTON,
Of Counsel for Receivers.

(Endorsed:) Filed October 30, 1907, at 6.05 p. m.

A true copy
[SEAL]

CHAS. J. ALLISON, *Clerk.*
CHAS. J. ALLISON, *Clerk.*

On the contrary there was a petition presented from a large number of creditors protesting against the removal of Adler. The hearing in that petition came on at Huntsville one night. Judge Hundley came

and himself conducted the proceedings. He at first examined Chandler and asked him whether or not harmony existed among the receivers. Chandler replied that Adler had declined to make a joint bond with him and Thompson.

I present the committee a copy of the decree appointing these receivers, with the provision in regard to the bond underscored in blue pencil, in order that they may see that there is no provision in that decree which requires a joint bond. He refers to the fact that that decree requires a joint bond in the opinion which he recently rendered in this case.

The decree first referred to is as follows:

ORDER APPOINTING RECEIVERS.

In the district court of the United States for the southern division of the northern district of Alabama—In the matter of Southern Steel Company, bankrupt—In bankruptcy.

Whereas a petition for its adjudication as a bankrupt was on the 24th day of October, 1907, filed against the Southern Steel Company, of the city of Gadsden, of the county of Etowah, in said district, and said petition is still pending; and

Whereas it is satisfactorily made to appear that it is absolutely necessary for the preservation of the estate of said bankrupt that a receiver be appointed to take charge of and to hold the estate of the said bankrupt and to continue the business of said bankrupt:

Now, on the motion of Augustus Benners, esq., attorney for the petitioners, it is ordered that Elijah G. Chandler, Joseph O. Thompson, and Edgar L. Adler, of Birmingham, Ala., in said district, be, and they are hereby, appointed receivers of the estate of the said bankrupt; said receivers shall qualify by and their authority as such shall begin upon their filing bond as such receivers in the sum of \$300,000, payable to the United States of America, with sufficient securities to be approved by the clerk of this court, and upon the filing of such bond such receivers shall take charge of, manage, and control such estate until otherwise ordered.

That said receivers be and they are empowered and directed to continue the operation of the mines, manufactories, and other business of said bankrupt wherever the same may be located until further ordered, and to pay out of any funds coming into their hands all unpaid wages due the workmen, clerks, and servants of said bankrupt.

That said receivers be, and they are, empowered and authorized for the purpose of operating said properties to borrow from time to time a sum not exceeding \$200,000, and to issue therefor their certificates as such receivers; which certificates shall be a lien upon the property and estate of said bankrupt prior to all other liens and incumbrances.

It is further ordered that should said Southern Steel Company be adjudicated a bankrupt, said receivers shall continue as such, with the powers herein conferred until the appointment and qualification of a trustee of said bankrupt.

It is further ordered, adjudged, and decreed that the petitions filed in this cause, and all matters and things connected therewith, are hereby referred to Sterling A. Wood, esq., of Birmingham, Ala., as special master, with full authority to summon witnesses, and the alleged bankrupt, and to take the testimony of the same, to pass upon all questions of law and fact that may arise in this matter, and report his findings thereon to me.

Witness the Hon. Oscar R. Hundley, judge of the said district court, in the city of Huntsville, in said district, on the 25th day of October, 1907.

OSCAR R. HUNDLEY,
*Judge of the District Court of the United States
for the Northern District of Alabama.*

(Indorsed:) Filed October 25, 1907. at 12.30 p. m.

A true copy.

[SEAL.]

CHAS. J. ALLISON, *Clerk.*

CHAS. J. ALLISON, *Clerk.*

Mr. BENNERS. Judge Hundley showed the greatest feeling at the hearing to which I refer. He attacked Adler bitterly in what he had to say; put him through a most rigid cross-examination with a view of developing whether or not he had any interest in this affair. Adler stated that they had been approached with reference to investing in this corporation; that they had examined the statements of it; and that after they had examined their statements had declined to put a dollar in it.

Representative BURNETT. That was before the receivers were appointed?

Mr. BENNERS. Yes, sir; but he stated that on this hearing. He further stated that they had been invited to act as receivers by Mr. J. D. Lacey, who is a large stockholder of the corporation, in anticipation of the probable necessity of a receiver.

He stated furthermore in that hearing that Adler & Co. would not furnish any funds on receivers' certificates to finance the corporation. He could not state the real reason. The real reason was that they were afraid to. As I understand, the ability of Adler & Co.—

Representative CLAYTON. That was after he had appointed Thompson and Chandler?

Mr. BENNERS. Yes, sir.

Senator BACON. You mean the hearing was afterwards?

Mr. BENNERS. Yes, sir.

Representative CLAYTON. In which that statement was made?

Mr. BENNERS. Yes, sir; about five or six days after the appointment of the receivers. It was a hearing on the petition of Thompson and Chandler to have Adler removed. He did say that if Thompson and Chandler would raise \$75,000 they would, if the other two receivers would raise a corresponding amount, furnish \$75,000 on receivers' certificates; and in evidence of their ability to make good that proposition, if it were accepted, I present an original letter from the First National Bank of Birmingham, to Adler & Co., stating that they would cash their checks in currency, which was then almost unobtainable, to the extent of \$75,000, provided the money was used exclusively to pay labor of the Southern Steel Company:

THE FIRST NATIONAL BANK,
Birmingham, Ala., October 29, 1907.

MESSRS. ADLER & Co.,
Birmingham, Ala.

GENTLEMEN: In reply to your inquiry will state that we will undertake to arrange to furnish currency and silver for your checks on Birmingham, New York, and Boston, in amounts not to exceed \$75,000, provided it is distinctly understood that the cash so furnished you will be used exclusively to pay labor for the Southern Steel Company, and for no other purpose.

Yours, very truly,

W. P. G. HARDING, *President.*

Senator DILLINGHAM. Was that letter presented at that hearing?

Mr. BENNERS. No, sir; it was not. The proposition was made and no disposition was shown to accept it, or to undertake to accept it.

Senator BACON. Was anything said by anyone at that hearing which indicated any doubt on the part of anyone present that they could comply with that proposition?

Mr. BENNERS. No, sir; none whatever.

Senator BACON. Speaking generally, was there any doubt in the mind of any person, familiar with business conditions in that community, and with the particular parties, as to their capacity to carry out that proposition?

Mr. BENNERS. No, sir. They had recently sold the property of the Tutwiler Coal and Iron Company, out of which they realized over a million dollars in cash, and this fact was a matter of public notoriety in that district.

To come back to this hearing, Judge Hundley worked himself up into a rage. I say this advisedly. He finally turned to Adler and he said, "Do you know that your brother," meaning Morris Adler, the witness here, "sent me an insulting telegram?" I had heard of the telegram. So I got up and stated to Judge Hundley that I knew Morris Adler and regarded him as incapable of insulting the court, and that I should like to see the telegram. He said, "It is in my files." I said, "Judge, I should like very much to see it. I should like to have it produced." He said, "I have read it, and I know what is in it. It was an improper telegram to send to the court." I said, "Judge Hundley, my information is that that telegram was addressed to me and not to you." He said, "That is impossible. I have the telegram." Well, I again asked that it be produced. His secretary then rose and said, "Judge Hundley, Mr. Benners is correct. The telegram was addressed to him, in your care, but his name was written in fine print, and you did not see it." It is incredible to me, if the committee will permit me to draw my own conclusions, that Judge Hundley could have, for five or six days, been under the impression that that telegram was addressed to him, when his secretary knew all the time it was not addressed to him, but addressed to me, because he had been advertising the fact, and it had come to our ears, that the Adlers had insulted him by sending him the telegram.

Representative BURNETT. Did you not ever get it at all?

Mr. BENNERS. I have never seen it to this day. I got a copy when I got back, and the telegram was addressed to me in Judge Hundley's care.

Now, coming on down, I stated a while ago that this case had been a mass of intrigue since it was instituted. I want to state to the committee that in my judgment Judge Hundley does not distinguish a judicial office from any political office, and he does not hesitate to use his judicial power for personal ends.

Only ten days ago I went into his chambers to get an order in this case. Up to that time, since the institution of this case, he had not shown a disposition to consult my views, although I believe I may state that our firm represents directly and indirectly the great bulk of the parties in interest in the case. He received me very cordially and invited my views at length about the case. "Well," he said, "if that is the case, I wish you would write me a letter saying that you have nothing to do with this fight, and that you do not approve of it, and that you do approve of my conduct of this litigation." I said, "Judge Hundley, I am sorry, but I can not write that letter." He then said, "Well, I had supposed that as an officer of the court you would take pleasure in doing it." He said, "You know, in any event, whether I am confirmed or not, I will be in office until March, 1909, and have the disposition of this litigation."

At that time there was pending before the special master the hearing on which the opinion which I presume has been presented to the committee, or a newspaper copy of which I now present to the committee, was based. It is as follows:

[From the Age-Herald, January 22, 1908, Birmingham, Ala.]

JUDGE HUNDLEY'S DECREE.

In the district court of the United States for the northern district of Alabama.

No. 7977. In re Birmingham Coal and Iron Company et al., petitioners, v. Southern Steel Company, respondent. In bankruptcy, southern division.

No. 239. In re Birmingham Coal and Iron Company et al., petitioners, v. Southern Steel Company, respondent. In bankruptcy, eastern division.

No. 7980. In re Dubose Brothers Iron Company et al., petitioners, v. Southern Steel Company, respondent. In bankruptcy, southern division.

No. 240. In re Dubose Brothers Iron Company et al., petitioners, v. Southern Steel Company, respondent. In bankruptcy, eastern division.

No. 8188. In re Southern Cement Company et al., petitioners, v. Southern Steel Company, respondent. In bankruptcy, southern division.

No. 250. In re Southern Cement Company et als., petitioners, v. Southern Steel Company, respondent. In bankruptcy, eastern division.

Percy & Benners, attorneys for first petitioning creditors.

Ward & Rudolph, Lee J. Marx, Powell & Blackburn, A. Leo Oberdofer, attorneys for second petitioning creditors.

O. R. Hood, attorney for Southern Steel Company.

Campbell & Johnston and E. H. Dryer, attorneys for receivers.

Hundley, district judge. In order to get a proper consideration of the issues involved in the matters here presented to the court, a brief statement of the facts and pleadings connected with this matter should be here referred to.

On the 24th day of October, 1907, a petition in behalf of certain creditors named therein was filed in this court praying that the Southern Steel Company be adjudged a bankrupt. These same creditors also filed at the same time a petition asking that Morris Adler and Edgar L. Adler be appointed receivers of the property and estate of the said steel company, which said petitions were duly presented to me at Huntsville, Ala., on the 25th day of October, 1907, at 9 a. m. At the same time there was presented to me at Huntsville a petition of other creditors named therein seeking to have other receivers appointed for the property and estates of the Southern Steel Company. In that petition the said creditors averred that the first petition was a collusive one between the creditors named therein and the bankrupt, and prayed the court that receivers should be appointed who were disinterested and who did not bear friendly and collusive interest with the bankrupt. At that time, with one set of creditors urging the appointment of Morris and Edgar Adler and another set of creditors averring collusive effort to secure the appointment of said receivers, the court was besieged with telegrams and telephone messages on both sides of the controversy of a bewildering and contradictory nature.

It was represented to the court that Edgar L. Adler was a man of practical experience in the management of such properties as formed the estates of the Southern Steel Company, and it was further shown to the court that Morris Adler had no such practical experience. With such evidence at hand as the court could at that time gather, in order to secure an impartial and intelligent management of the properties of the bankrupt, the court entered an order appointing said Edgar L. Adler, who was shown to have had some actual experience in such matters; E. G. Chandler, a man whom it was shown to the court to have had a large experience in the management of commissaries, with which the receivers would naturally have to deal in an extensive manner. The court also appointed as one of these receivers Joseph O. Thompson, a man of fine character and business integrity. At that time Edgar L. Adler was totally unknown to the court, either personally or as to his capacity and fitness to discharge the duties of receiver, and he was appointed at the suggestion of the creditors and upon testimony bearing upon his fitness. The other two receivers, Chandler and Thompson, from a long acquaintance, were personally

known by the court to be men of irreproachable character and unquestioned business integrity. After the presentation of the petitions as above referred to, the court, after a patient and careful consideration, made appointment of the three receivers as above outlined.

NOT IN HARMONY.

On October 30, 1907, the receivers, Chandler and Thompson, filed with this court a report in writing calling the attention of the court to the fact that Edgar L. Adler was not acting in harmony with them to the end that the best results might be obtained for the benefit of the property intrusted to their care. The court had previously learned from Edgar L. Adler, although the decree of the court had required that there should be a joint bond of all the receivers in the sum of \$300,000, that he had determined to make his bond separate and distinct from the other receivers. The receivers, Adler, Chandler, and Thompson, appeared before this court at Huntsville on November 1, 1907, and were examined orally as to their administration of the property and estate, and their ability to raise sufficient funds to keep the plants in operation. Edgar L. Adler was sworn and testified in answer to questions by counsel and also by this court, that neither he nor his brother, Morris Adler, could in any manner, nor would they, raise sufficient funds, to be obtained upon receiver's certificates, to pay the expense of keeping the plants of the bankrupt in operation. Thereupon it was suggested that by the addition of T. G. Bush to the number of receivers, he being a man known to the court for many years as a man of highest character and integrity and a man having had experience in the management of all kinds of properties pertaining to this district, and a man of well-known financial ability, that he could secure such funds as might be needed to properly finance the steel company and keep it in operation, so long as said operation might remain profitable. The court thereupon appointed T. G. Bush as the fourth receiver, and he was afterwards made chairman of the receivers. Upon the appointment of said Bush as said receiver, all parties in interest who were present before the court, including the receivers, Adler, Chandler, and Thompson, were asked as to whether they had any objections to urge to the appointment of said Bush, and the court was thereupon informed that no objection could be made to his appointment from any source. These receivers immediately took charge of the property of the bankrupt and secured such funds on receivers' certificates necessary to keep the plants of the Southern Steel Company in operation, which they continued to do so long as the said operation proved profitable.

FOUR RECEIVERS MAKE REPORT.

These four receivers made a report to this court on December 12, 1907, in which, with minutest detail, they presented each and every act of theirs from the date of their appointment. Notice of the date fixed for the making of this report was given to all the creditors of the bankrupt corporation, and without attempting to present the contents of that report, it is only necessary in this connection to state that the records of this court show that there has been no challenge of that report in any manner. After a reference to the special master of all the petitions and pleadings in this cause, together with all the facts involved in the various controversies, in which he was ordered to report his findings and the testimony to the court, his report was duly filed and exceptions made thereto by the second petitioning creditor. All matters connected with these causes are now presented for the consideration of the court, all parties in interest being present in person or by counsel. No exceptions were taken or filed to the report of the special master by the Southern Steel Company, or by the first petitioning creditors who had insisted upon the appointment of Morris and Edgar Adler as receivers. The second petitioning creditor now insists that the facts shown in evidence and as found by the special master in his report as to the collusion between the two Adlers and the bankrupt make it imperative upon the court to dismiss the first petition and to adjudicate upon their second petition. Among the facts relied upon to sustain this contention was the uncontroverted evidence that a week or ten days before the petitions in bankruptcy were filed, J. D. Lacey, one of the directors of the respondent bankrupt, had arranged with Edgar L. Adler and his brother, Morris Adler, to act as receivers of the Southern Steel Company in case of necessity, and that when the necessity did arrive, and before the petition was presented to this court, that

he and his brother allowed their names to be inserted in the first petition for receivers filed in the cause and made bond prior to and in contemplation thereof. There is further evidence and admissions, shown by the testimony, tending to show collusion and an effort on the part of the bankrupt to control or participate in the management of its estate, even after it had been committed to the jurisdiction of this court. It is most vehemently urged, therefore, that in view of this evidence and admissions, the bankrupt should not be adjudicated on the first petition, but that it should be dismissed and an adjudication be had on the second petition.

There can be no question that in such cases as this, where it is shown that the appointment of a receiver or trustee in bankruptcy is brought about by active interference and procurement of the bankrupt, the appointment of the same will be set aside on proper petition and showing to the court, it matters not how high the character or capacity of the receiver or trustee may be who is so attempted to be procured by the bankrupt. As is said by Lochren, district judge, in the case of *In re Hanson* (156 Fed., 717) :

"It is well settled by all the authorities that the trustee represents the creditors and not the bankrupt in the administration of the estate; and that it is improper that the bankrupt shall actively interfere with the matter of his selection and appointment; and that if he does interfere and the person aided by him is appointed by votes procured by such interference the appointment should for that reason be disapproved. (*In re McGill*, 106 Fed., 57, 45; C. C. A., 218; *In re Rekersdres* (D. C.), 108 Fed., 206; *In re Henschel* (D. C.), 109 Fed., 861.)"

APPLICATION TO RECEIVERS.

What is here said as to the application of this principle to trustees must of course apply with much more force to receivers, for whom the court is solely responsible. While this is undoubtedly the law and the contention made would have authorized the court to entirely disregard the request by the first petitioning creditors as to the receivers, yet it is not sufficient cause to justify a setting aside of their petition at this time. The action of this court, in disregarding in part their request as to receivers and in appointing three other receivers who are entirely disinterested, purged these proceedings of any collusive effect growing out of the promotion of the Adlers by the bankrupt. There can be no question but that the bankrupt can act in harmony with creditors of his own selection for the purpose of surrendering his estate to the court, but the line is drawn when he attempts in any wise to interfere with or procure the appointment of a receiver or trustee.

There has been no objection filed with reference to the appointment of any of the receivers in this cause, except as herein set forth. No act of theirs has been challenged by any party to this record. All of the parties in interest are now present before the court, and with surprising unanimity they admit and agree that the Southern Steel Company should be declared a bankrupt on one or the other of the grounds alleged in the pleadings. It may be that the act of bankruptcy averred in the first petition can not be sustained as matter of law on the proof offered in support thereof. It is not necessary to decide that question here. That petition is in all respects regular on its face and sufficiently avers an act of bankruptcy. Under that petition every order of this court has been made. The acts of bankruptcy, averred under the amendment offered by the first petitioners, are claimed to be sustained by the testimony. The application to amend this petition so that the same will contain all the allegations of bankruptcy alleged in the second petition is granted. No objection being made, and after notice to all parties in interest in open court, all the proceedings in bankruptcy pending against the Southern Steel Company will be transferred to the southern division of this district. And there being no objections interposed to the consolidation of all the said causes as amended, such will be done and the causes will proceed as one. The Southern Steel Company will be declared bankrupt and a decree will now be entered in accordance with this opinion. The special master, Sterling A. Wood, is hereby appointed special referee in bankruptcy in this cause. All other questions are reserved.

We were, as a matter of course, vitally interested in that proceeding. We represented the petitioning creditors, and the question was—although you never would gather it from the opinion—whether or not the corporation should be adjudged a bankrupt.

Presumably, if we were successful in that petition we would get a large fee as being the attorneys for the petitioning creditors who brought into court this fund.

He then became somewhat agitated and said: "Well, sir, it is a mere matter of taste. I thought you would take pleasure in doing it. You can do it or not, just as you like." I told him it was a fact, that I had nothing to do with the fight that had been made against him; that I had declined to do so; that the interests, if for no other reason, which we represented were so large that we could not afford to become entangled in any complication whatsoever with reference to the case. And with some embarrassment I left the room.

Now, I desire to state to the committee that my views about Judge Hundley are the views of very many other members of the bar who have responsible interests to represent. They are afraid of him and they distrust him. The impression has gone abroad that his confirmation is a matter of course. He has advertised that fact daily in the papers. Whether it is or not I do not know. But I for one have felt so deeply the danger of having him confirmed as Federal judge that I come here and make this statement at the risk of being forever debarred from practicing in that court.

Representative BURNETT. Mr. Benners, I do not know whether it was clearly stated that in the first interview with Judge Hundley you brought to his attention the ability of the Adlers to finance that corporation and keep it going. I do not remember about that. I do not want a repetition, Mr. Chairman, but I think it is important that that should be brought out.

Mr. BENNERS. I stated to him that Morris Adler had been the vice-president of the Adler Company and Edgar L. Adler had been its general manager; that this corporation owned coal and ore mines similar to those of the Southern Steel Company, and blast furnaces, and that in a general way the business and operation of that company was the same; that they also operated the Bessemer Rolling Mill, and were generally recognized as men of great financial ability and business experience, and at the same time had the best of business reputation.

Senator BACON. What did you state as to their command of the money necessary?

Mr. BENNERS. I stated that they had the money, and that in that respect they were probably different from anyone else who might be appointed receiver. It was not a question with them of raising the money, but they actually had the money and desired to use it for the purpose of financing this corporation on receiver certificates.

Senator BACON. Did you make those representations to the court by their authority?

Mr. BENNERS. I did.

Senator BACON. Did you state to him the fact that you were authorized to make that statement?

Mr. BENNERS. Yes, sir; and that fact was in effect indicated in these letters which I presented and clearly in the telegrams which were sent.

Senator BACON. Was there any doubt thrown by any representation or by the suggestion of anybody as to their ability?

Mr. BENNERS. There was not. The fact will be presented to this committee that two other attorneys appeared there and asked for the appointment of a receiver and presented a petition stating that the proceeding between the creditors whom we represented and the corporation was a collusive one. That is a fact.

To understand that petition, however, it is necessary for the committee to understand that this petition was presented by lawyers representing very small claims, by lawyers who habitually practice in the bankruptcy court; who appear in every bankruptcy case and endeavor, by getting a claim, to get to represent the trustees or somebody connected with the case.

All these gentlemen did was to say that they had no objection to the appointment of the Adlers, but asked the court to appoint a third man, the idea being that if they could name the third man they would get the representation of him. They offered no objection to the Adlers, though they did ask that a third receiver be appointed.

Senator BACON. To represent the receivers?

Mr. BENNERS. Yes, sir.

Senator BACON. You said they were to get—

Mr. BENNERS. If you will pardon me, the custom in our practice—I do not know how it is elsewhere—is for the parties to present a petition and secure the appointment of receivers, and then, as lawyers, to represent those receivers.

Representative BURNETT. Did those lawyers ask for the appointment of Thompson or Chandler?

Mr. BENNERS. Neither Thompson nor Chandler's name was mentioned.

Representative CLAYTON. Did you represent to Judge Hundley who desired the appointment of the Adlers as receivers?

Mr. BENNERS. I told him these large creditors desired it, and Mr. Hood, the attorney for the corporation, who was present, stated that from the standpoint of those interested in the corporation they were satisfied that the Adlers could not be improved upon; that they would represent all interests. I explained to the judge then that the property was heavily encumbered; that these 600 creditors, although their claims aggregated \$2,500,000, were utterly helpless to protect themselves against this encumbrance; that its foreclosure would wipe out all possibility of their obtaining anything for their claims, and that it would be necessary for the stockholders, the creditors, and the bondholders and all to cooperate in order that the unsecured creditors should get a dollar, a fact which was eminently true and which remains true until this day.

Representative CLAYTON. You then told him the importance of keeping the mills of this concern going and the mines in operation?

Mr. BENNERS. That is a fact and one which he has always acquiesced in, or at least it is an opinion in which he has always acquiesced.

Representative CLAYTON. And the danger that would ensue if the industry were shut down?

Mr. BENNERS. Yes, sir.

Representative CLAYTON. It was highly important that it should be kept as a going concern?

Mr. BENNERS. Yes, sir.

Representative CLAYTON. And that the creditors had induced the Adlers to accept the receivership with that purpose in view?

Mr. BENNERS. That was it.

Representative CLAYTON. How many laborers did they employ?

Mr. BENNERS. There were, approximately speaking, 5,000 men on the pay roll.

Representative RICHARDSON. They were thrown out of employment?

Mr. BENNERS. Yes, sir.

Senator BACON. Would they have been continued in employment if the company had been kept as a going concern?

Mr. BENNERS. The furnaces would undoubtedly have been lessened by the depression which came on immediately after that time. In any event, had they had unlimited money, the operations would necessarily have been lessened shortly after that time, as they were everywhere else. That was a fact which at that time could not be foreseen.

Senator BACON. If it had been continued, do you think there would have been a considerable portion of the men kept in employment?

Mr. BENNERS. Yes, sir.

Senator BACON. What proportion, do you think?

Mr. BENNERS. I can hardly estimate it. I should say the course of that company would not have been different from that of the other industrial corporations in that district, which have been running at one-third of their capacity.

Senator BACON. You think in any event one-third would have been kept in employment?

Mr. BENNERS. Yes, sir.

Senator BACON. You mean that if it had been kept as a going concern two-thirds would have lost their positions and one-third would have been retained?

Mr. BENNERS. Yes, sir.

Representative BURNETT. In this connection, I have a letter from the vice-president, Mr. Schuler, who said:

The above plants would have kept about three-fourths of all the employees of the company at work through the winter.

Representative RICHARDSON. Do you know anything about the mortgages that that Thompson, the receiver, executed to Mr. Hundley for the payment of \$4,500?

Mr. BENNERS. I know nothing about it.

Representative RICHARDSON. Do you know the common public opinion on that subject?

Mr. BENNERS. I can not say that I do. I have seen the statement made in the newspapers about it, but I have not discussed it.

Representative RICHARDSON. Jo Thompson, you say, is one of the political referees of the State?

Mr. BENNERS. Yes, sir.

Representative RICHARDSON. And is also an internal-revenue collector?

Mr. BENNERS. Yes, sir.

Representative RICHARDSON. And is a very stanch political friend to Mr. Hundley?

Mr. BENNERS. Of course, I know nothing of those facts except such matters as appear in the newspapers.

Senator BACON. You mean the last fact?

Mr. BENNERS. The fact that he is a staunch supporter of Mr. Hundley?

Senator BACON. Yes.

Mr. BENNERS. My information is that he came to Washington and was instrumental in securing his appointment. Of course I know nothing of my own knowledge about that. It is the report; that is the common understanding.

Senator CLARKE, of Arkansas. You say your firm had control of the litigation, as the result of which this receivership was raised. What is the name of your firm?

Mr. BENNERS. Percy & Benners.

Senator CLARKE, of Arkansas. Whom did you represent in the litigation?

Mr. BENNERS. The creditors.

Senator CLARKE, of Arkansas. How many of them?

Mr. BENNERS. About 300 out of the 600 unsecured creditors.

Senator CLARKE, of Arkansas. What amount of indebtedness, as compared with the whole, did you represent?

Mr. BENNERS. We represented the claims of those 300, aggregating \$300,000.

Senator CLARKE, of Arkansas. What was the entire amount of the claims?

Mr. BENNERS. The entire amount is approximately \$2,500,000.

Senator CLARKE, of Arkansas. You say 300 persons were your clients?

Mr. BENNERS. Yes, sir. I desire to state that at the time when the petition was filed we did not represent that entire number of 300.

Senator CLARKE, of Arkansas. How many did you represent?

Mr. BENNERS. The creditors' committee was immediately formed after the filing of the petition, and they employed us to represent that committee and the claims which we collected—

Senator CLARKE, of Arkansas. I should like to know the amount and character of the claims the owners of which originated the idea of applying for a receiver. Of course after it was put in motion others joined, necessarily.

Mr. BENNERS. The first person who approached us, one of the creditors, was a representative of the Birmingham Coal and Iron Company.

Senator CLARKE, of Arkansas. What was the character of his claim?

Mr. BENNERS. It was a claim for coal and ore, I think; mining products, in any event, sold to the Southern Steel Company.

Senator CLARKE, of Arkansas. I thought the Southern Steel Company was itself a producer of those commodities?

Mr. BENNERS. It is very common among the companies to exchange products. One will have an overplus of coke, for instance, and sell it to another company. That is very common.

Senator CLARKE, of Arkansas. Then the amount of debts that had accumulated at that time was about two and a half million?

Mr. BENNERS. Yes, sir; they owed approximately that amount.

Senator CLARKE, of Arkansas. What was the bonded indebtedness?

Mr. BENNERS. The bonded indebtedness is between \$5,000,000 and \$6,000,000.

Senator CLARKE, of Arkansas. The two million and a half, therefore, represented losses that had been sustained by the company in its attempt to operate the plant?

Mr. BENNERS. As I understand, it represented, to a considerable extent, improvements which had been made. The Southern Steel Company is a comparatively new corporation. It was organized about two years ago. Very extensive improvements had been made on its property.

Senator CLARKE, of Arkansas. The general creditors had furnished money to make improvements on the property which at that time was subject to a lien of about \$6,000,000?

Mr. BENNERS. The "general creditors?" A large quantity of this money was borrowed money. I know of one case in which they floated \$400,000 of notes.

Senator CLARKE, of Arkansas. On a second lien, or on no lien at all?

Mr. BENNERS. They were not secured at all.

Senator CLARKE, of Arkansas. It was, therefore, money furnished to the company which it could not pay and for which the creditors had no specific lien?

Mr. BENNERS. That is a fact.

Representative BURNETT. Senator, may I ask a question in this connection?

Senator CLARKE, of Arkansas. Yes.

Representative BURNETT. I will ask you if they had not recently bought considerable outside properties and whether this indebtedness was not partly for that purpose—property in Georgia and Tennessee?

Mr. BENNERS. I can not speak accurately on that point, Mr. Burnett, because we did not represent the corporation. Except as I have picked up some knowledge since this receivership, I am not familiar in detail with its history.

Senator CLARKE, of Arkansas. What caused such a wide miscalculation on the part of the management that it created \$2,500,000 worth of debts which it could not take care of itself.

Mr. BENNERS. I can not explain that. I am frank to confess that I do not know the history of the corporation.

Senator CLARKE, of Arkansas. Is it not a fact that about that time iron properties were being shut down rather than enlarged?

Mr. BENNERS. Immediately after this time, if you will recall—this was a few days after the Knickerbocker Trust Company failed—of course the industrial depression began to affect us, and it is a fact that iron properties began to go out of blast.

Senator CLARKE, of Arkansas. Did you have the consent of the lien creditors, representing the \$6,000,000 of debt, to issue receivers' certificates or debentures, which would constitute a prior lien on the property?

Mr. BENNERS. No; we did not. In my opinion they could not have been issued prior to the mortgage. There was some unencumbered property of the value, approximately, of \$1,200,000, and it was contemplated that the certificates would be a lien on the unencumbered properties.

Senator CLARKE, of Arkansas. Was that circumstance made known to the judge—the fact that that part of the plant—I speak of the

"plant," although I do not mean entirely the machinery, but the entire enterprise—worth \$1,200,000, approximately, was free from any lien?

Mr. BENNERS. I can not state that. The petition for the receivers recited that much of the property was subject to incumbrances—all of the lands—and no question was raised at the time the receivers were appointed about the issuance of certificates. I prayed in my petition for an order authorizing a half million dollars of certificates, which he granted.

Senator CLARKE, of Arkansas. Why did not the management of the company—

Senator BACON. I did not understand you. You say that prayer was granted?

Mr. BENNERS. Yes, sir. I am not sure whether the amount fixed was \$500,000 or \$200,000, but, anyhow, in the original order there was permission to issue receivers' certificates of as great an amount as \$200,000, and probably it was a half million.

Senator BACON. I beg pardon for interrupting you, Senator.

Senator CLARKE, of Arkansas. Making it a lien on what?

Mr. BENNERS. The decree declared that it should be a paramount lien on all the property of the corporation. As a matter of course, not being made with notice to the holders of the prior liens, it could not have been made superior to the prior liens.

Senator CLARKE, of Arkansas. What reason had you to believe that Adler could run the business of the Southern Steel Company better than the management itself could run it?

Mr. BENNERS. There had been factional fights among the parties interested in the Southern Steel Company. I have a very high opinion of the financial ability of the Adlers and of their practical experience and ability. I have seen them demonstrate it. I have seen them make much money out of similar property, and with the discord that had prevailed among the stockholders eliminated, by the vesting of control of the property in two hands, I thought it was reasonable to suppose that these men would be successful.

Senator CLARKE, of Arkansas. The Adlers, you say, made a considerable sum of money in the same kind of business?

Mr. BENNERS. Yes, sir.

Senator CLARKE, of Arkansas. They were worth \$1,000,000, according to your understanding?

Mr. BENNERS. Yes, sir.

Senator CLARKE, of Arkansas. Did they seek this receivership for the purpose of receiving the fees that would come to them or as a means of investing money?

Mr. BENNERS. On the contrary, as I have it from them, and from other gentlemen connected with the matter—and I believe the statement to be true—when they were asked to take the receivership they declined. Then parties interested went to them again, and asked the Adler who is here present, Morris Adler, to accept. He said he would not do it because he could not give it that detailed attention which was necessary to successfully carry it on. He was urged again—this may sound strange, but I understand it to be the fact—and he finally said he would accept provided his brother, who is younger and a more active man, was associated with him.

Senator CLARKE, of Arkansas. What inducement was held out to him to make him change his mind?

Mr. BENNERS. I think his statement as to his reasons is the true reason. Adler is quite a financier, as financiers go in our country. There are large financial interests connected with the Southern Steel Company. Adler, by having charge of this company and working it with any degree of success, would have made a favorable impression on those interests, to his advantage in future financial operations. If he had impressed these people with the fact that he was a man of ability and could handle property of this kind it would enable him to float other schemes, to put it in a few words.

Senator CLARKE, of Arkansas. Did the management of the Southern Steel Company know of his peculiar qualifications?

Mr. BENNERS. That is my information.

Senator CLARKE, of Arkansas. Then why did they not employ him? He seems to have been out of a job and open to a job. Why did they not employ him instead of writing a letter confessing a state of bankruptcy?

Mr. BENNERS. They had to go into bankruptcy by reason of the \$2,500,000 of debt. It was a case of the company going into the hands of a receiver or of having——

Senator CLARKE, of Arkansas. If he could advance the money——

Mr. BENNERS. Do not misunderstand me, that in any event he would have been able to control and overturn an indebtedness of \$2,500,000 in the then financial condition of the corporation.

Senator CLARKE, of Arkansas. Then what did he hope to do by the advancement of the \$75,000?

Mr. BENNERS. Continue the operation of the plant.

Senator CLARKE, of Arkansas. Was the business making money at the time the company became insolvent?

Mr. BENNERS. I understand it is represented that it was losing money. I have heard that statement made. I can not say definitely.

Senator CLARKE, of Arkansas. The supposition was that he could take their business and make more money than they themselves?

Mr. BENNERS. Yes, sir. I believe that to be the fact. I believe their losses were largely due to dissensions——

Senator CLARKE, of Arkansas. It was really then not a bankruptcy proceeding at all, but an agreed proceeding, by which they hoped, under the cover of the court's protection, as soon as they got the other creditors off of their backs, that the Adlers would take it and make money out of it?

Mr. BENNERS. Under the court's protection?

Senator CLARKE, of Arkansas. Yes; preventing other creditors from bringing suit.

Mr. BENNERS. That is the inevitable effect of going into bankruptcy.

Senator CLARKE, of Arkansas. They had no hope of paying the two million and a half dollars at all?

Mr. BENNERS. They had been making strenuous efforts to raise the money with which to pay up. As I understand from Mr. Hood, who had charge of these negotiations, they had arranged for a loan of a million and a half dollars immediately prior to the appointment of the receivers, but the panic came on and the party who had agreed

to lend the million and a half dollars then said he could not make good.

Senator CLARKE, of Arkansas. Then you think Judge Hundley ought to have agreed with you that he could conduct the business through a receiver more successfully than the owners of the business could conduct it?

Mr. BENNERS. He did agree with me. He did authorize the continuance of the business and he authorized the issuance of certificates.

Senator CLARKE, of Arkansas. Did he do that on his own motion or as the result of the petition?

Mr. BENNERS. The fact was stated in the petition I filed that we desired to have the property operated. He granted the petition and authorized the receivers to continue operations and to borrow the money to which I have referred. He did not differ with us.

Senator CLARKE, of Arkansas. The available credit left to the plant, after providing for the \$6,000,000 of charges, the specific lien on the property, was not deemed sufficient security for the two million dollars and a half of general unsecured debts; and the intention was to put the property into the hands of Adler, in the hope that he would do what?

Mr. BENNERS. He agreed to put up immediately as much as \$200,000.

Senator CLARKE, of Arkansas. What for?

Mr. BENNERS. To pay pay rolls, to meet the running current expenses.

Senator CLARKE, of Arkansas. Would not the business pay its own current expenses?

Mr. BENNERS. No, sir. The cash of the company had been depleted to a very small amount, not exceeding \$20,000.

Senator CLARKE, of Arkansas. Were there any quick assets on hand?

Mr. BENNERS. Yes, sir; quite a lot of manufactured goods; a lot of steel and wire rods and nails.

Senator CLARKE, of Arkansas. Why were they not sold?

Mr. BENNERS. I do not know.

Senator CLARKE, of Arkansas. If the business had been continued, the result would have been to invest another \$200,000 in products of the same kind?

Mr. BENNERS. Unless a market could be found, to be sure. But if you will pardon me, I think you labor under one misapprehension from your question, and that is this. The judge did not differ for a moment with regard to the policy of continuing operations. He authorized that.

Senator CLARKE, of Arkansas. That was at your suggestion?

Mr. BENNERS. Yes, sir.

Senator CLARKE, of Arkansas. He simply adopted your judgment in that matter?

Mr. BENNERS. Yes, sir.

Senator CLARKE, of Arkansas. So that the plant as security, disconnected from the Adlers, was not sufficient to induce moneyed men of that country to advance the money to keep it going?

Mr. BENNERS. They could not borrow any more money.

Senator CLARKE, of Arkansas. If the Adlers were willing to do something, it was something which the commercial men of that community would not do?

Mr. BENNERS. Their attitude would be very different.

Senator CLARKE, of Arkansas. In what respect?

Mr. BENNERS. It would be different from the attitude of a person advancing \$200,000 to the concern and becoming a common creditor, because if a person loaned the corporation, prior to insolvency—

Senator CLARKE, of Arkansas. I am speaking of lending to the receivers. If I did not frame the question so as to present that view, I will do it now. The equity of redemption that passed into the hands of the receivers was not of itself sufficient security for this amount of money disconnected from this element of favoritism that would be shown by a friendly receiver?

Mr. BENNERS. No, sir; it was not sufficient.

Representative BURNETT. Were the banks in a condition at that time to make large loans?

Mr. BENNERS. The banks were making no loans at all in our district. How it was elsewhere I do not know.

Senator CLARKE, of Arkansas. Why did not Adler lend the money to his brother or why did not the one who was in there as a receiver lend the necessary amount of money?

Mr. BENNERS. For the reason I have stated. Here were two men in the majority in the receivership, and what minute they would see fit to inaugurate this or that policy he could not foresee.

Senator CLARKE, of Arkansas. That would not affect the security, if there was enough property there?

Mr. BENNERS. Possibly.

Senator CLARKE, of Arkansas. So that he was using the matter of lending the money as a means of prizing himself into the receivership?

Mr. BENNERS. The qualification which presented itself to the interested parties was the fact that he would lend this money, whether he was trying to prize himself into it or not. It did not impress me that way. It did not impress me that he was very anxious—

Senator CLARKE, of Arkansas. He did not decline it when it was tendered him?

Mr. BENNERS. When I came back from Huntsville—of course they knew it up there—Edgar Adler declined to serve—the one who was appointed. This creditors' committee, headed by Mr. John Morris—I remember the conversation because it occurred in my office—Adler said he would not qualify, and Morris came to him and said, "Edgar"—they were personal friends—"for Heaven's sake take hold of the thing and hold on until we can elect trustees and try to do something for us." It was that representation which induced this Adler to serve and continue in—

Senator CLARKE, of Arkansas. Why did not the creditors, when this state of affairs, which you now deem so objectionable, was made known to them, elect a trustee and take possession themselves?

Mr. BENNERS. They pushed just as hard as they could to bring on the trustees' election, and they did bring it on the other day, and practically unanimously elected other men, just as soon as they could get the hearing. I have a copy of a long letter I wrote Judge Hundley, urging him to have this hearing as quickly as possible, so that the trustees could be elected, but, as I saw it, Judge Hundley was throwing obstacles in my way. That is the way it appeared to me.

Senator CLARKE, of Arkansas. What business policy for the improvement of the condition of that steel company did Adler project or propose in which he was overruled by his coreceivers?

Mr. BENNERS. What policy?

Senator CLARKE, of Arkansas. Yes.

Mr. BENNERS. I can not say that he adopted any in which he was overruled. They simply could not raise the money.

Senator CLARKE, of Arkansas. That was the sole difficulty?

Mr. BENNERS. Sir?

Senator CLARKE, of Arkansas. The sole difficulty was that they did not have in their hands collateral satisfactory to the money lenders in that neighborhood?

Mr. BENNERS. Whether or not he would have inaugurated any particular policy I can not say. I confess my ignorance on that point.

Senator CLARKE, of Arkansas. Then, he was not, to your knowledge, overruled by the coreceivers?

Mr. BENNERS. No, sir.

Senator CLARKE, of Arkansas. What policy did they inaugurate or propose which was to the detriment of the estate?

Mr. BENNERS. So far as I know there was no difference of policy among the receivers. It very rapidly became simply a condition of indifference and lassitude. The plants were rapidly thereafter shut down, and there was nothing to do but to keep the mines clear.

Senator CLARKE, of Arkansas. The drift of the objection is that Judge Hundley did not give you the opportunity, by the appointment of the two Adlers to the exclusion of others, to try a scheme which you thought would be successful?

Mr. BENNERS. My objection, if I am in the attitude of an objector, is that he appointed two men who were, to say the least, totally incompetent to be receivers of a property of this kind. The failure to appoint the two Adlers could not be criticised at all if he had appointed instead one or two men in that community who were familiar with the conduct and management of this class of property.

Senator CLARKE, of Arkansas. In what respect did their want of

Mr. BENNERS. I can not say that they have done anything; I do not want to be put in that attitude before this committee; I do not desire to be put in the attitude of saying that these men have done anything to wreck the property. I do not say that.

Senator CLARKE, of Arkansas. Then the difficulty is that you think Mr. Adler would have loaned money to himself as receiver, and he would not lend it to anybody else.

Mr. BENNERS. Yes, sir.

Senator CLARKE, of Arkansas. And that is your objection?

Mr. BENNERS. Yes, sir.

Senator CLARKE, of Arkansas. If they had had the \$200,000 they would have invested it in the manufacture of additional products which they could not sell.

Mr. BENNERS. They would have put up the money if they themselves had had the management and control.

Senator CLARKE, of Arkansas. And the effect of putting up \$200,000 would have been the running of the plant for two or three months and the accumulating of a lot of products of the same character as they already had on hand.

Mr. BENNERS. I can not prophesy what the business course would have been. I do not know whether the stock would have accumulated or not. I judge it would, because I understand business generally had been very quiet.

Senator CLARKE, of Arkansas. A concern with \$2,500,000 of unsecured debts and \$6,000,000 of secured debts must have connected with it, directly or indirectly, somewhere, some persons of means, or who could influence persons with means. Why did not somebody else raise the comparatively insignificant sum of \$200,000 if it was essential?

Mr. BENNERS. Why did they not?

Senator CLARKE, of Arkansas. Yes.

Mr. BENNERS. It is my information that great efforts were made to raise a million and a half dollars in New York shortly prior to this time.

Senator CLARKE, of Arkansas. Then you complain that Judge Hundley did not avail himself of the exceptional circumstance that Mr. Adler was the only man in the United States who was willing to lend money on that plant at that time and in the circumstances in which it was situated at the time?

Mr. BENNERS. I hope I may not be misunderstood. I do not criticize Judge Hundley for his failure to appoint both of the Adlers. He did appoint one. If I am in the attitude of an objector or a protestant in any sense, my protest is against the appointment of these two men who in no event were adapted to the place.

Senator CLARKE, of Arkansas. You are not willing to say that their appointment injured the estate in any respect or to any extent?

Mr. BENNERS. Yes; I do think so.

Senator CLARKE, of Arkansas. Please be good enough to state why you think they injured it.

Mr. BENNERS. I will, sir. There were six issues of securities on this property. The property consists of the lands of the Southern Steel Company proper and of the stock of three subsidiary corporations. All of the lands of those three subsidiary corporations are encumbered by bond issues. The stock of those three subsidiary corporations is pledged to secure an issue of collateral notes. That makes the greatest diversity of interest among the lien holders. There are six issues of these securities. Having good financial reputation, I believe the Adlers would at once have inspired the confidence of the holders of those securities; and that there would have been a willingness on their part to postpone the collection of their secured debt for any reasonable length of time, looking to a reorganization. As it is, those security holders have all become alarmed, and there is a great diversity of purpose and opinion among them in reference to an organization. Their claims are in many different hands, and there is not now possible that unity of action which I believe was possible in the first instance—it was so represented to us—among these different security holders.

Senator CLARKE, of Arkansas. Has any obstruction been thrown in the way of that consummation of unity by Thompson and Chandler?

Mr. BENNERS. I do not think anybody has ever consulted Thompson and Chandler about any purpose with reference to the property. So far as I know they are not in the confidence of anybody on that subject.

Senator CLARKE, of Arkansas. Whom do you consult—Adler?

Mr. BENNERS. Not at all. So far as we are concerned the only persons we are thrown in contact with are the trustees.

Senator CLARKE, of Arkansas. The receivers are out?

Mr. BENNERS. Yes, sir.

Senator CLARKE, of Arkansas. Did you ever attempt to take any steps before that, in which you found Adler willing to adopt your views and these other gentlemen unwilling?

Mr. BENNERS. No, sir; I can not say that I did.

Senator CLARKE, of Arkansas. Then you can not put your finger upon any tangible obstruction or any tangible loss as the result of the action of Thompson and Chandler?

Mr. BENNERS. I can not.

Senator CLARKE, of Arkansas. That is all.

Representative BURNETT. Could they raise a hundred and fifty thousand dollars when Mr. Edgar Adler proposed to put up \$75,000?

Mr. BENNERS. They were not able to raise any money at all, sir.

Representative RICHARDSON. When was the first time you heard of the defense of Judge Hundley as to collusion?

Mr. BENNERS. The first time I heard of it was at the hearing, five or six days after the receivers were originally appointed, which he conducted at Huntsville, when he then made an effort to bring out these facts. Nothing was said about it when the receivers were appointed.

Senator CLARKE, of Arkansas. There is one question I failed to ask you. You said that in the presence of Judge Hundley, when Mr. Adler stated that they could not get the money, he did not give his real reason, but that you knew the real reason, and that it consisted of the fact that he was afraid to do so. Why did he not make the statement to Judge Hundley? We are trying Judge Hundley, and not Mr. Adler.

Mr. BENNERS. Yes.

Senator CLARKE, of Arkansas. Why did he not give Judge Hundley his real reason by frankly stating to him why he could not?

Mr. BENNERS. It is rather a delicate matter to tell a judge you are afraid of him. It is a delicate thing for any man to do.

Senator CLARKE, of Arkansas. Was it not the proper thing for Mr. Adler to resign and get out of there if he got to a point where he could not deal in absolute frankness with the creator of his place? Why did he not get out?

Mr. BENNERS. He only got in at the instance of these creditors who wanted him to hold on until they could elect trustees, and when the trustee election came on he did get out.

Senator CLARKE, of Arkansas. Did they elect either one of the Adlers a trustee?

Mr. BENNERS. They did not.

Senator CLARKE, of Arkansas. If they were so conspicuously qualified, why did not the creditors elect one of the Adlers?

Mr. BENNERS. For the simple reason that the court showed such an antipathy to these men that it would not have been politic in any event to put them before the court as the representatives of any persons.

Senator CLARKE, of Arkansas. That involves another question. Did they ever pass up to the court for confirmation any tentative action of theirs that he declined to confirm?

Mr. BENNERS. Absolutely nothing has been done in the case from the day the thing started. It has been such a mass of judicial intrigue that the case rested without moving a peg from the day the receivers were appointed until a few days ago, when the corporation was adjudged a bankrupt, and only since then have we undertaken to deal with the serious problems connected with the administration.

Senator CLARKE, of Arkansas. Then, why do you say that the judge has developed such an antipathy to the Adlers that it made it impolitic for the creditors, when they came to act on their own responsibility, to select one of them as a trustee?

Mr. BENNERS. Because I think the judge sought to justify his mistake in appointing Thompson and Chandler by abusing the Adlers.

Senator CLARKE, of Arkansas. Did he ever refuse to indorse any policy they suggested to him?

Mr. BENNERS. No policy of theirs was ever presented to him.

Senator CLARKE, of Arkansas. Then, you are taking cognizance of unofficial declarations of the judge as the basis of the statement you make?

Mr. BENNERS. No, sir. I think I have been in touch with everybody who has represented anything that amounted to anything in the case.

Senator CLARKE, of Arkansas. If he had not disagreed with the receivers about any proposed policy or any action taken, then, in what way did Judge Hundley manifest this hostility to Adler that you say justified the creditors in refusing to elect Adler because, notwithstanding his superior qualifications, it would have been impolitic?

Mr. BENNERS. I can refer you to this opinion here. I think it shows quite an antipathy on his part to the Adlers. It is the opinion which he rendered—

Senator CLARKE, of Arkansas. The judge had authority to remove him?

Mr. BENNERS. He did.

Senator CLARKE, of Arkansas. He does not seem to have gone to the extent that justified—

Mr. BENNERS. Sir?

Senator CLARKE, of Arkansas. The antipathy of the judge had not gone to the extent of applying a practical remedy?

Mr. BENNERS. I verily believe he did undertake to remove him under the petition, but on the hearing there was no misconduct—

Senator CLARKE, of Arkansas. Do you not know that a judge can remove a receiver without any reason at all?

Mr. BENNERS. I think it is a matter of power. Here were creditors protesting against his removal. I think as a matter of policy he was afraid to.

Representative BURNETT. I will ask if the protest of the six Members of Congress had not been filed here, which might have had some effect on his action?

Mr. BENNERS. The case never moved a peg until this subcommittee was appointed.

Senator CLARKE, of Arkansas. What do you mean by that—that the case never moved a peg? Did you ask the judge to do something which he refused to do?

Mr. BENNERS. I did. I have a long letter—I have a copy of it here—dated November 21—

Senator CLARKE, of Arkansas. What did you ask him to do?

Mr. BENNERS. To give us a hearing on our petition, asking that the corporation should be adjudged a bankrupt so that trustees might be elected.

Senator CLARKE, of Arkansas. What reason did he give for not doing that?

Mr. BENNERS. I have his reply here.

Senator CLARKE, of Arkansas. Let us see what he says on that point?

Mr. BENNERS. To understand the reply, perhaps I should read my letter. It is quite a long letter.

Senator CLARKE, of Arkansas. State briefly what the letter is?

Mr. BENNERS. In my letter I called his attention to the fact that the property of this corporation was in the hands of three different sets of receivers—those appointed by him, one set appointed in Tennessee and another set appointed in Georgia. I told him that with the property thus divided in control it was impossible to properly handle it; that I had been before Judge Newman, of Atlanta, with reference to extending the Alabama receivership over this property; that he had cited me to a case recently decided by our circuit court of appeals in which the court held that an ancillary proceeding in bankruptcy was unknown; that it did not lie; and that for that reason Judge Newman felt powerless to do anything with reference to bringing this Georgia property under the influence of the Alabama receivership. I pointed all that out in my letter.

Senator CLARKE, of Arkansas. Did judge Newman give you any earlier hearing than Judge Hundley did, treating it as an original proceeding in Georgia?

Mr. BENNERS. Judge Newman gave us a most patient and attentive hearing every time we went there.

Senator CLARKE, of Arkansas. But he did not give you any judgment any quicker than Judge Hundley did?

Mr. BENNERS. I should not like to make invidious comparisons.

Senator CLARKE, of Arkansas. I mean you did not get earlier action. However, we will leave out the comparison.

Mr. BENNERS. Judge Newman heard us the day we went there. He put himself out of the way to give us a hearing. He sat patiently—

Representative BURNETT. And then told you the difficulty in connection with the ancillary receivership?

Mr. BENNERS. Yes, sir.

Senator CLARKE, of Arkansas. Now, please read that letter, sir.

Mr. BENNERS. It is as follows:

JUDGE'S CHAMBERS, UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ALABAMA,
Pensacola, Fla., November 23, 1907.

Oscar R. Hundley, judge.
Messrs. PERCEY & BENNERS,
Birmingham, Ala.

DEAR SIRS: I am in receipt of your letter of the 21st, and note all you say. You must understand, of course, that the only interest I have in the matter of

the Southern Steel Company is that its affairs may be managed with ability and fairness to all parties interested and that this management shall remain, while in charge of the court, in the hands of disinterested persons who will look only to the best interests of the property.

I note what you say about going to Judge Sheppard at Anniston in order to get a speedy hearing, but you failed to state whether this application was made by agreement of all parties in interest, or whether it was made by one or more of the confending parties. I am unable to know this, of course, because your letter does not claim to be written in the interest of anyone in particular, and I presume it is only written in the nature of a "friend of the court." I am, of course, at all times glad to have any suggestions along these lines you may deem proper to make. I shall write to the master, Mr. Wood, and to Judge Sheppard that where decrees can be entered by consent of all parties that the same may be speedily done.

Of course I could not get these orders by consent.

Senator CLARKE, of Arkansas. You stated that the petition was filed by yourself in behalf of creditors and assented to?

Mr. BENNERS. It was assented to by Mr. Hood, the attorney of the corporation.

Senator CLARKE, of Arkansas. It was the answering creditors who did not give consent to the default decree being entered?

Mr. BENNERS. Yes, sir.

Senator CLARKE, of Arkansas. That was not Thompson's fault?

Mr. BENNERS. Not at all.

Senator CLARKE, of Arkansas. It was not Hundley's fault?

Mr. BENNERS. He could have given us a hearing.

Senator CLARKE, of Arkansas. What is the date of that letter?

Mr. BENNERS. November 23, 1907.

Senator CLARKE, of Arkansas. When were the bankruptcy proceedings inaugurated?

Mr. BENNERS. October 24.

Senator CLARKE, of Arkansas. About thirty days afterwards.

Mr. BENNERS. Yes, sir.

Senator CLARKE, of Arkansas. Do you think that a delay of thirty days on the part of the judge should prevent his confirmation here? However, proceed with the reading of the letter. I will not interfere with you any more.

Mr. BENNERS. All of this letter is eminently true except his statement that he does not know whom we represent.

You must understand, of course, that where there are conflicting interests and contested issues of law and fact, such matters can not be hurried through the court by any one or more of the parties in interest, without the consent or proper notice to the other parties.

I had not proposed to get any orders without notice.

I shall be on the bench at Birmingham on the 9th of December, and all such matters as are not agreed to by all parties in interest I shall set for hearing and final determination at the earliest possible moment that I can, with due regard to the other business of the court.

Knowing how busy Judge Sheppard is in the trial of cases at Anniston, and the fact that the jurisdiction of the matters involved in this case has not yet been settled as to whether they shall be determined in the Anniston or in the Birmingham court, I should not feel like urging him to take up the matters and try them before my return to Birmingham.

I am not advised, so far, as to what the issues are to be decided. I hardly see how it would be proper for me to make any request of Judge Sheppard, or to agree to anything myself, without all the papers before me. I desire to do, of course, all that I can do consistently with my duty to have these matters honestly, fairly, and justly adjudicated.

Very truly, yours,

OSCAR R. HUNDLEY.

I do not question any of that. All I asked was to have a speedy hearing.

Senator CLARKE, of Arkansas. I have no further questions.

LETTER OF E. T. SCHULER.

Representative BURNETT. I have here a letter from the vice-president, which I should like to read to the committee, and file at this stage. It is from Mr. E. T. Schuler, the vice-president. It is short and I will read it.

ALABAMA STEEL AND WIRE COMPANY,
BIRMINGHAM, ALA., U. S. A.,
Gadsden, February 4, 1908.

Hon. JOHN L. BURNETT,
Washington, D. C.

DEAR SIR: With reference to possibility of operating plants of this company from October last with the \$225,000 that would have been provided had Messrs. Thompson and Chandler each furnished \$75,000, the amount Mr. Edgar Adler offered to contribute, beg to say that this amount with the resources left belonging to the company, which included \$150,000 of commissary stock, there would have been no difficulty in keeping the Gadsden plant, the Ensley plant, the Virginia and Altoona coal mines and ovens, and the Crudup and Georgia brown ore mines in operation and in taking care of the product.

The above plants would have kept about three-fourths of all the employees of the company at work through the winter. It would have kept from leaving all the foreign families brought here by the company at great expense and retained all of its organization and all of its trade. The loss to the company by losing its trade, its organization, its foreign labor, and by the closing down of the plants and cost of starting them up again with no organization, cost of taking care of its plants during the time they have been down, will not be less than \$1,000,000.

Yours, truly,

E. T. SCHULER.

Senator CLARKE, of Arkansas. What is his relation to this company?

Representative BURNETT. Vice-president.

Senator CLARKE, of Arkansas. Why did he not do all of those big things when he had charge of it himself?

Representative BURNETT. I know something about that. I know they had been buying a lot of outside Georgia property. The debts they incurred were for the purchase of this property in Georgia and Tennessee.

Senator CLARKE, of Arkansas. Was two million and a half dollars invested in that way without any possible way of paying for the property?

Representative BURNETT. I do not know that all of it was for that purpose, but a part of it was.

Senator CLARKE, of Arkansas. That is the same fellow who was in charge of the business?

Representative BURNETT. Yes, sir; that is the vice-president of the company.

STATEMENT OF OLIVER R. HOOD.

Mr. Oliver R. Hood appeared before the subcommittee.

Senator DILLINGHAM. The subcommittee are together for the purpose of hearing anything you may know that bears upon the question of the confirmation of Judge Hundley. You may state your residence and occupation, and then proceed.

Mr. HOOD. Gadsden, Ala. I am a lawyer by profession. The only information of which I am possessed that bears at all upon the subject of the confirmation of Judge Hundley is such information as I may have with reference to his appointment of the receivers of the Southern Steel Company. I am not informed nor am I familiar with the facts touching any other charge that may have been made against him.

Senator DILLINGHAM. You may state what you know about that matter which you deem material.

Mr. HOOD. On the 24th day of October of last year I arrived in the city of Birmingham from New York, where I had been in consultation with the board of directors of the Southern Steel Company. Upon arriving there I informed the local officers in charge of that company that we had failed to raise the necessary money to meet some obligations of the company which were maturing in the near future, and that a receivership of the company was inevitable; whereupon the fact was made known to me that a reputable firm of lawyers in Birmingham—in fact, one of the leading firms of the city—had prepared a petition in bankruptcy with a view of filing it and securing the appointment of temporary receivers. That was the firm of Percy & Benners.

I was also informed that they had in contemplation as receivers Messrs. Adler—Morris and Edgar Adler; that these men were men of some considerable experience in the management of like properties to those of the Southern Steel Company; that they were men of considerable means; had in the near past disposed of large property interests down there, and had a considerable amount of cash money; that they were men of high character, and that they were willing to advance the necessary funds from their own private means to finance the receivership.

Senator CLARKE, of Arkansas. What do you mean by finance the receivership?

Mr. HOOD. I mean to put up the necessary money to keep the plants and mines of that company in operation.

Senator CLARKE, of Arkansas. Had not the trouble with that business been that it had already been kept in operation too much?

Mr. HOOD. That is not my information.

Senator CLARKE, of Arkansas. How did they get in debt so much?

Mr. HOOD. By buying too much property without sufficient capital; trying to go too fast, is my idea.

Senator CLARKE, of Arkansas. Proceed. I beg pardon for interrupting you.

Mr. HOOD. After this was made known to me I went and saw Messrs. Percy & Benners, and they reiterated substantially the statement that had been made to me by the officers of the company down there. They assured me that the Adlers would put up this money. It was necessary to meet the pay rolls of the company and it was necessary or deemed to be necessary by the directors of the company to keep the properties in operation.

I made some inquiry as to the standing of the Adlers. I knew them by reputation, but did not know them personally. I made some inquiry as to their standing in that community and as to the

experience they had had in the management of this kind of property. I made those inquiries through some business men in Birmingham and I found no one but who spoke in the highest terms of them.

Senator DILLINGHAM. Whom did you represent?

Mr. HOOD. I represented the Southern Steel Company. The Adlers were satisfactory to me from the investigation I made, and then I made that fact known to Messrs. Percy and Benners, and told them I would go to Huntsville, where Judge Hundley was holding court, with Mr. Benners of that firm, and would be present when he presented his petition for the appointment of the receivers, and that I would acquiesce in the appointment of these gentlemen as receivers.

It was our purpose to leave Birmingham on a Louisville and Nashville train, which left there about 12.15 o'clock noon, arriving at Huntsville some time in the afternoon. We failed to make that train. In the meantime information was conveyed to me that other lawyers in Birmingham were seeking to have petitions signed and perhaps there would be a race or competition as to who would reach Judge Hundley first. I wired him early in the afternoon of the 24th to make no orders in the Southern Steel Company case until I arrived in Huntsville.

Mr. Benners and I left Birmingham in the afternoon, as I now recall it, between 4 and 5 o'clock, spending the night at Decatur, a town on the way between Birmingham and Huntsville, arriving in Huntsville early the next morning.

In the meantime, Mr. Percy, the senior member of the firm of Percy & Benners, informed us that he had had communication with Judge Hundley over the telephone, making an engagement with him for us to meet him in his chambers the next morning at 9 o'clock.

Mr. Benners and I went to his chamber at 9, and just at that time he had not arrived. We went back later, and there were present some three gentlemen and a young boy. In a short time Judge Hundley came in. Mr. Benners presented the petition and made a statement to the judge at some length, in which he described the character of the property owned by the Southern Steel Company, and emphasized the importance of keeping those properties in operation, and stating that it was a going concern at that time; that the properties were in operation and he suggested—perhaps he had the suggestion in his petition—anyway he suggested orally there in his statement the Messrs. Adler as suitable and proper persons for receivers.

Two of the other gentlemen who were in Judge Hundley's chambers at the time—two lawyers of Birmingham, one by the name of Oberdorfer and the other by the name of Blackman, or Blackburn—had a petition which they had filed. I did not read it. They made a statement in which they insisted that more than one receiver should be appointed, suggesting, among other things, that the Southern Steel Company had quite a number of commissaries, which were operated in connection with its properties, and that it would be wise to appoint a receiver who was familiar with the

mercantile or commissary business. They suggested three or four gentlemen; perhaps a Mr. Kettig, a Mr. Moore, a Mr. Steiner, and possibly one other.

After the statements had been made the judge called upon me to know what I had to say. I made in substance this statement to him: That I had just returned from New York, where I had been in conference with the board of directors of the company; that while there the directors had secured the promise of the sum of a million and a half dollars from a gentleman who at that particular time was in Newport, as I now recall it; that before that gentleman could get to New York and deliver these funds to the company the panic came on; that when he arrived there the run was actually taking place on the banks near Wall street, and for that reason the company was unable to raise the money necessary to meet these maturing obligations.

I told him that I wanted to impress upon him at the outset that it was the contention of the board of directors and officers of the Southern Steel Company that it was not insolvent; that it had assets from two to four times more than its liabilities; that it was not a case of ordinary bankruptcy, in which a person, finding himself insolvent, delivered his property over to a bankrupt court to be administered for his creditors; but that I had assurances from the board of directors, some of whom were men of large means, that as soon as the financial condition would permit, money would be raised, if possible, the company taken out of the hands of the receivers, and the creditors settled with, thereby attempting to impress upon him the idea that the Southern Steel Company had a very important interest in the litigation and in the personnel of the receivers.

I further stated to him that, as we viewed it, a receivership was necessary; that the properties of the company consisted of four blast furnaces, six steel furnaces, a blooming mill, and an open-hearth mill, a wire, rod, and nail mill; that it operated somewhere between 12 and 20 ore and coal mines; that it was important to keep these coal mines in operation, as much damage would necessarily result if they were allowed to fill with water or allowed to stay out of operation any length of time; that it was important to keep the mills in operation—important for two reasons; that there were in the employ of the company between four and five thousand men; that that constituted their organization; that these men had been brought from different parts of the country because of their fitness to fill the various places they occupied; that if the plants were shut down and they were thrown out of employment, this labor and this organization would be dissipated; that the men in the employ of the company would leave, some of them going to Pittsburg and to other points in the North where they came from.

I further stated to him that I had made some investigation of the Adlers. I stated to him in substance what I have stated to you, as to the result of my investigation. I stated to him that I had the assurance from Percy & Benners, and also from the Adlers, that they would put up of their own means the necessary funds to keep the plants in operation.

Senator CLARKE, of Arkansas. You got that assurance from Percy? Did you get it directly from Adler?

Mr. HOOD. I got it from Percy & Benners and from the Adlers.

Senator CLARKE, of Arkansas. What did he mean by the "necessary funds?" Did he limit the amount?

Mr. HOOD. If any amount was named, I do not recall it. I have heard it suggested since. I have heard an amount suggested since.

Senator CLARKE, of Arkansas. What amount?

Mr. HOOD. I believe it was \$250,000, if I am correct.

Senator CLARKE, of Arkansas. Proceed from that point on.

Mr. HOOD. At that time, if the amount was named, I do not recall it. I feel reasonably sure that I named no amount to Judge Hundley.

I further stated to him that, in my judgment, it was impossible to borrow any money from the banks on receivers' certificates or otherwise, for the reason that the panic was on and the banks had all they could do to take care of themselves.

After these statements were made the judge stated that it was a matter of considerable importance; that he wanted to look over the papers and give the matter some thought; and that at 11 o'clock he would announce his ruling as to the persons he would appoint as receivers, in the court room, and that if we would be there at that time, he would make the announcement.

At that time the lawyers who were present left the room. The other gentleman who had been there remained there.

Senator BACON. Who was the other gentleman? I did not catch his name.

Mr. HOOD. The other gentleman, as I afterwards learned and now know, was Mr. Chandler, whom he appointed receiver. I did not know him at that time.

Representative BURNETT. He stayed in with the judge?

Mr. HOOD. He remained in the judge's chambers when we left there.

Mr. Benners had asked for the privilege of issuing \$500,000, I think it was, of receivers' certificates. After we left the chambers I suggested to him that perhaps that was too much; that I thought \$200,000 would be enough; and if not a further order could be obtained later on, if needed.

We went back to see Judge Hundley to make that suggestion to him, and met him on the street, at which time I again stated to him that the matter of appointing receivers who were able, with their own funds, to keep the properties in operation was, as I viewed it, one of great importance; at which time he stated that he had not fully made up his mind whom he was going to appoint receivers, but whoever he appointed would keep the plant in operation; that he had an assurance from a bank of more than \$1,000,000 capital, as I believe he expressed it, that it would furnish the necessary funds to keep the properties in operation.

When he announced the appointment of the receivers I was not present. Hence I do not know what was said at that time. That is in substance what I know with reference to the appointment of receivers.

Senator CLARKE, of Arkansas. You say you had just returned from New York, having attended a meeting of the board of directors of the Southern Steel Company, and that you there got the information that the concern would have to pass into the hands of receivers.

Mr. HOOD. They informed me at that time, after they learned—

that is, the directors I speak of—that they would be unable to raise this million and a half dollars, that a receivership was necessary, in their judgment.

Senator CLARKE, of Arkansas. Did they make any arrangement by which there should be a fund for the receivers to pay the current operating expenses? Did they make any arrangement by which that fund should be raised, or were they so hopelessly insolvent that they just turned it over to the court as a wreck to be administered?

Mr. HOOD. At that time a number of persons were discussed by the board of directors. Different persons were discussed at some length—their fitness for operating the plant, their experience, their ability to furnish the money, and the other questions that naturally entered into the consideration of the appointment of the receiver; and I believe one of the directors made it known to the board that the Adlers would finance or would themselves put up the money.

Senator CLARKE, of Arkansas. Then there had been some negotiations between some of the directors and the Adlers before they found out that they were not going to get the million and a half dollars from the gentleman who was at Newport?

Mr. HOOD. My information is—I had no knowledge myself—that for some two weeks or more, I will say, the Messrs. Adler had been negotiating with some of the directors, perhaps, and even with some of the executive officers, with a view of buying an interest in the company, and it is possible that this receivership had been mentioned to them. But it was not done in my presence, and what I may say about that is hearsay.

Senator CLARKE, of Arkansas. There was a connection between some of the directors and the Adlers that justified——

Mr. HOOD. Oh, they had conferences.

Senator CLARKE, of Arkansas. Which justified one of them in saying in the meeting that if Adler was appointed he would furnish the amount of money?

Mr. HOOD. I do not know that he named an amount.

Senator CLARKE, of Arkansas. That he would furnish money?

Mr. HOOD. Yes, sir.

Senator CLARKE, of Arkansas. Was that the entire resource that the board of directors had? Could not they, among themselves or in the markets of New York, with this property which you say was worth six times its indebtedness, raise the necessary money?

Mr. HOOD. I am not familiar with the resources of the several stockholders of the Southern Steel Company.

Senator CLARKE, of Arkansas. But when you came back to face this insolvency proceeding you were not equipped with any credit or suggestion that would aid, except that you might meet up with it when you got to Birmingham?

Mr. HOOD. No, sir. No funds and no promise of any.

Senator CLARKE, of Arkansas. You faced the thing as a naked proposition—to turn an insolvent estate over to the court to be administered?

Mr. HOOD. No, sir; as I stated in the beginning——

Senator CLARKE, of Arkansas. What arrangement did you have to mitigate the loss?

Mr. HOOD. We had none, Senator. We had no arrangement then because the panic was on.

Senator CLARKE, of Arkansas. Suppose you had met up first with these lawyers that you met at Huntsville and they had told you that they were going to file a petition for a receiver?

Mr. HOOD. If I had investigated, as I did the Adlers, the persons they proposed to have appointed receivers, and was satisfied, as I was with reference to the Adlers, after the investigation I made of them, that they would do so, I would have assented.

Senator CLARKE, of Arkansas. You would have assented without any agreement to pay money?

Mr. HOOD. I do not know what you mean—"to pay money."

Senator CLARKE, of Arkansas. To advance money.

Mr. HOOD. I say if they had agreed to do that. Oh, no—

Senator CLARKE, of Arkansas. Is it not a fact—

Mr. HOOD. I would not have assented to anybody being appointed receiver for the Southern Steel Company.

Senator CLARKE, of Arkansas. You would not?

Mr. HOOD. I would not. I would not have assented to the appointment of just any person.

Senator CLARKE, of Arkansas. I mean any person whom the court would be likely to appoint. Is there not a conflicting responsibility and obligation between being a receiver and being a lender of money to the receiver?

Mr. HOOD. I do not think so.

Senator CLARKE, of Arkansas. Do you think any court would entertain that sort of a proposition?

Mr. HOOD. I do not think a court which authorized the issuance of receivers' certificates would consider that the person who purchased those certificates or advanced money to the court to operate the property in its possession—I do not think the court would treat it as a conflict between the purposes of the receivers' certificates and the court.

Senator CLARKE, of Arkansas. Do not the receivers in the first instance pass upon the necessity for an outlay and the proper price to pay for it and the rate of interest?

Mr. HOOD. They would possibly make their recommendations to the court, but I should say the court would pass upon the necessity.

Senator CLARKE, of Arkansas. The court would pass upon it? Then the court is the person finally responsible?

Mr. HOOD. As I understand the practice of the law.

Senator CLARKE, of Arkansas. You say this concern, as a matter of fact, was not insolvent? Yet you or somebody wrote a letter for them which was the foundation for the proceedings that were taken by Percy & Benners.

Mr. HOOD. I wrote a letter, not admitting its insolvency. I wrote it in the language of the bankruptcy law, which, in substance, as I recall it now, admitted its inability to pay its debts and its willingness to be adjudged a bankrupt.

Senator CLARKE, of Arkansas. Then the proceeding was not a real proceeding at all, but a colorable transaction gotten up to get a little more time on some of the debts?

Mr. HOOD. It was in the language of the bankruptcy law.

Senator CLARKE, of Arkansas. I am asking as to the character of the proceeding. You say the company was not insolvent and that you did not intend to admit its insolvency, and yet you signed the

paper that precipitated the proceeding in court, when, as a matter of fact, it was intended as a temporary affair to keep off other creditors?

Mr. HOOD. I did not consider it that way at all. I should not have signed it if I had taken the view that it was insolvent or that the paper was gotten up for the purpose of defrauding somebody. If that is the object and purpose of the bankruptcy law, it ought to be speedily repealed.

Senator CLARKE, of Arkansas. I am talking about that. You did not understand that the proceeding was to go to the extent of administering that estate?

Mr. HOOD. I did not so understand, and I hope it will not yet go to the extent of selling that property, piece by piece, at a time when nobody can raise large sums of money; and I should hate to see it done.

Senator CLARKE, of Arkansas. The method adopted in applying for a receiver was really intended to limit the court in its judgment as to who would be a proper receiver to such a person as had previously agreed to advance money to run the business?

Mr. HOOD. No, sir. I should not have undertaken at all to embarrass the court in the exercise of its free choice.

Senator CLARKE, of Arkansas. Knowing all about it from first to last, as you do, do you contend that Judge Hundley made a mistake in not adopting your suggestion?

Mr. HOOD. I certainly do.

Senator CLARKE, of Arkansas. Do you think he acted corruptly?

Mr. HOOD. Oh, I would not make that charge, Senator.

Senator CLARKE, of Arkansas. Do you think he acted in such willful disregard of the rights of persons as to indicate a purpose to do something outside the domain of the discretion of a judge?

Mr. HOOD. I will let you draw your conclusions from the facts. Mr. Chandler, as I understand, the man who remained there in his chambers, is the man with whom he lives—Judge Hundley and his family.

Senator CLARKE, of Arkansas. Does it disqualify a man to be a receiver in Alabama to live in the same house with the judge?

Mr. HOOD. I am not speaking about legal qualifications. Mr. Thompson is a close personal friend of Judge Hundley. He is what is called there a Presidential referee. He controls the patronage down there. I am told he favored the appointment of Judge Hundley. Neither one of these men—

Senator CLARKE, of Arkansas. Do you think that because he favored the appointment of Judge Hundley that Judge Hundley ought to ignore him in everything that is done down there?

Mr. HOOD. No, sir. I do not make any such contention. You asked me to state a conclusion. I want to state the facts so that you yourself can draw your own conclusion.

Neither of these men had had any experience in the operation of steel plants, in the operation of blast furnaces, in the operation of this number of mines or this kind of property. Neither one of these men was suggested to Judge Hundley by any of the lawyers who appeared there. What his motives were in appointing them, what controlled him in making those appointments, is a conclusion that you can draw as well as I.

Senator CLARKE, of Arkansas. Let me ask you with respect to a few more facts if I am to draw the conclusion. Did either of these receivers ever suggest anything in the management of that property which the third receiver, Adler, disagreed to?

Mr. HOOD. If they did I do not know of it. I am not very familiar with their proceedings.

Senator CLARKE, of Arkansas. Why do you speak of them as inefficient and incompetent receivers if they did not do some specific act upon which you can place your finger and say "This was a wrongful exercise of authority."

Mr. HOOD. I would not say they were inefficient and incompetent for any receivership.

Senator CLARKE, of Arkansas. You said they were disqualified because they were not enemies of the judge.

Mr. HOOD. I did not make any such contention.

Senator CLARKE, of Arkansas. That they were disqualified because they were friendly to Judge Hundley.

Mr. HOOD. I should think I would make a very poor receiver of a railroad or of some large property with respect to the management of which I know nothing.

Senator CLARKE, of Arkansas. You stated a moment ago that one of the—

Mr. HOOD. If I were a judge, and I think if you were, when you went to appoint a person receiver of a large going corporation, employing some 5,000 men, thereby meaning that there were 25,000 people dependent upon that property being kept in operation—I believe that you or that I would undertake to appoint a receiver who had had some experience in the operation of such properties.

Senator CLARKE, of Arkansas. Did he not appoint one of the very two men you suggested to look after it?

Mr. HOOD. He appointed one of them.

Senator CLARKE, of Arkansas. You spoke a moment ago—

Mr. HOOD. I take it that at that time Judge Hundley was not very much impressed with the idea of any collusion; else he would not have appointed either one of these conspirators.

Senator CLARKE, of Arkansas. Now, did not one of the attorneys whom you found in his chambers insist that somebody who had familiarity with the commissary branch of the business should be appointed receiver?

Mr. HOOD. He did.

Senator CLARKE, of Arkansas. And the vice-president has written a letter saying they had on hand \$150,000 worth of that kind of stock?

Mr. HOOD. I think they had fully that much.

Senator CLARKE, of Arkansas. Was it not a wise proposition to appoint somebody familiar with that business?

Mr. HOOD. I believe there are seventeen commissaries. I think not, Senator, answering your question. You see, the commissary department of this company was a very insignificant department. They had—

Senator CLARKE, of Arkansas. It involved feeding 5,000 men and keeping supplies on hand to feed them. That is not insignificant.

Mr. HOOD. I should not say to feed that many, because a great many of these men did not trade with the commissaries. They might have traded elsewhere.

Senator CLARKE, of Arkansas. Did you object to anybody being appointed to take charge of that after you heard this other attorney say it was a proper exercise of authority?

Mr. HOOD. I stated to the judge that it was quite insignificant.

Senator CLARKE, of Arkansas. Was it not the most perishable item in the whole list of assets? A man would not walk off with the land or the buildings.

Mr. HOOD. It is possible that some few groceries in the commissaries were perishable. I should not think that would be true of the dry goods, the shoes, clothing, hats, furnishing goods.

Senator CLARKE, of Arkansas. I mean perishable in the sense that somebody had to look after them and care for them.

Mr. HOOD. As I stated to Judge Hundley, my information was that they had capable men looking after it.

Senator CLARKE, of Arkansas. Your complaint about the particular receivers who were appointed was that they did not have funds enough of their own or friends with sufficient funds to supplement the offer of Mr. Adler to furnish \$75,000 if each one of them would put up \$75,000, making \$225,000?

Mr. HOOD. No, sir.

Senator CLARKE of Arkansas. Then what is your complaint of the action of the judge in making the appointments of Thompson and Chandler?

Mr. HOOD. I have not made any complaint so far as I am concerned, but, as I stated to you a while ago, if I had been acting as judge, I would have endeavored to appoint capable men, men who had had experience in the operation of that kind of property.

Senator CLARKE, of Arkansas. I have asked you the question as to what particular acts they did, by reason of their inexperience and incompetency, which resulted in detriment to the estate.

Mr. HOOD. They shut down the plant. That was one thing. I do not know of any other.

Senator CLARKE, of Arkansas. Was that due to their poverty and unwillingness to invest their private means in a property which had just proved a failure?

Mr. HOOD. I do not know.

Senator CLARKE of Arkansas. You do not know?

Mr. HOOD. I do not know what it was due to. I know they tried to borrow the money.

Senator CLARKE, of Arkansas. They did not meet the speculative ideas that the stockholders and the directors had, that the receivers would put up money and run the plant, although the stockholders and the directors could not operate it successfully.

Mr. HOOD. I am informed the stockholders and the directors had made some money.

Senator CLARKE, of Arkansas. They had also incurred some two million and a half of unsecured debts?

Mr. HOOD. Somewhere in that neighborhood, I should say. I do not know the exact amount.

Senator CLARKE, of Arkansas. What we are interested in and what I should like to get an expression of opinion from you about is as to

whether or not you deem the action of the Judge in failing to appoint the elder Adler and in actually appointing Chandler and Thompson a mistake of judgment or a willful disregard of the substantial rights of parties litigant then in the court before him?

Mr. HOOD. Would you like to have my opinion in reference to that?

Senator CLARKE, of Arkansas. Yes. What is your judgment, taking all the facts and circumstances as they passed under your observation?

Mr. HOOD. I believe it was a willful disregard of the interests of those interested in the Southern Steel Company, and that it was a reward to his personal and political friends.

Senator CLARKE, of Arkansas. Suppose they had been competent persons and had had the money that you say the receivers ought to have had in that particular case. Then would the circumstance that they were his personal and political friends have vitiated the rightfulness of their appointment?

Mr. HOOD. The mere circumstance that they had been his personal and political friends would not, but a man who possesses the delicate mental organism of a judge would certainly hesitate to appoint as receiver the man with whom he lived.

Senator CLARKE of Arkansas. Now, let me put that question again; I am interested in your answer. Assuming now that they had had just as much money as Adler, and just the same experience that Adler had, and just as willing to put in their time——

Mr. HOOD. And were of as high character.

Senator CLARKE, of Arkansas. And were of as high character as Adler; but that they had the added burden of being close personal and political friends of the judge, would the——

Mr. HOOD. That would not disqualify them at all, of course.

Senator CLARKE, of Arkansas. Then what are you complaining of is their want of competency and their want of money. If they had the qualifications and the money, you would not complain of their friendship for the judge?

Mr. HOOD. No; I do not object to their friendship to the judge.

Senator CLARKE, of Arkansas. You object because they did not have any money and because, as you say, they did not have the necessary qualifications. Is that it?

Mr. HOOD. Well, I do not know that that is a fair way to express it.

Senator CLARKE, of Arkansas. What is there about those people that you want to object to? I want to locate it. I want to know whether it is their friendship for the judge or their poverty?

Mr. HOOD. I am not objecting to their poverty. The criticism that I make of the judge is for the appointment of these men in view of the fact that they had no experience and no knowledge of the operation of property of this character, and they had no means, under the peculiar circumstances here involved—that is, in view of the statement made to him that here were men of high character, here were men of experience in the operation of like properties, and here were men who would furnish the money—in view of the fact that that statement had been made to him, then the point of the criticism I make is that he should not have appointed these men who were without experience, who were men that made no promises, and who, as

subsequently developed, did not have the ability to furnish the money to operate the plant.

Senator CLARKE, of Arkansas. You object to their incompetency and want of money. Those are the points on which you locate your objection? I want to know what they did as receivers that manifested a state of incompetency of which you complain?

Mr. Hood. I do not think they did a great deal. They shut down the plant in a comparatively short time after they were appointed.

Senator CLARKE, of Arkansas. Then the question of incompetency is out of the case?

Mr. Hood. They have not filed their report. I have not gone around or sent detectives around or undertaken to investigate their acts. I do not know what they have done. I do not know that they have done anything to be criticised, or anything that is really wrong.

Senator CLARKE, of Arkansas. You have leveled at them the charge of incompetency. On what performance or nonperformance do you base that statement?

Mr. Hood. If a man should make application to operate any large property, such as the mining of coal or iron, the manufacture of steel and iron products, or to operate a railroad, or any character of property that involved skill, scientific, or special training, and it developed that that man had had no experience whatever in that line, I should not think he was a competent man.

Senator CLARKE, of Arkansas. Is it not a fact that no plant of that magnitude is operated by any one man? Is not the business divided into departments, and do they not have a superintendent or expert in charge of each particular department?

Mr. Hood. Yes; it is possibly true that they have experts. They have an expert miner, perhaps, in charge of the mines, and they have an expert superintendent in charge of the steel mill, and an expert man in charge——

Senator CLARKE, of Arkansas. They have a legal department?

Mr. Hood. In charge of the furnaces, and a lawyer to advise them with reference to legal questions.

Senator CLARKE, of Arkansas. Then, in answer to my question you are unable to put your finger on any particular act of Thompson or Chandler that resulted in loss to the estate in their hands by reason of their incompetency and want of familiarity with that business?

Mr. Hood. I would not pretend to say. I think the shutting down of the plant resulted in great loss.

Senator CLARKE, of Arkansas. Was that the result of their incompetency or the result of their inability to get money?

Mr. Hood. I must confess that I am unable to answer that question. I do not know what motive actuated them in shutting it down.

Senator CLARKE, of Arkansas. Did you apply to the court to have it reopened, and tender the funds necessary to conduct the business?

Mr. Hood. Oh, no.

Senator CLARKE, of Arkansas. Did anybody interested in this company as creditor or stockholder or director offer to get it the money, should they persist in shutting down the plant?

Mr. Hood. No, sir. This being a bankruptcy proceeding in contemplation of law these men were only temporary. As quickly as a creditors' meeting could be called they were to select men of their own choice to act as trustees, which has been done in the recent past.

Senator CLARKE, of Arkansas. What did the tangible items of the estate consist of at the time it was turned over to the receivers?

Mr. HOOD. Quite a great many.

Senator CLARKE, of Arkansas. Did they have any manufactured—

Mr. HOOD. The inventory or the schedules of the assets and liabilities of the Southern Steel Company amount, I should say, to over 100 pages of closely typewritten matter.

Senator CLARKE, of Arkansas. Did they have on hand any manufactured products like rails, nails, and things of that kind?

Mr. HOOD. No rails were manufactured by this particular concern. There were nails, fence wire, steel billets, pig iron.

Senator CLARKE, of Arkansas. Did they have on hand any manufacturing plant had been kept running. What would they have done with the money?

Mr. HOOD. The \$200,000?

Senator CLARKE, of Arkansas. Yes. Would they have made more of the same stuff they had on hand?

Mr. HOOD. I presume so.

Senator CLARKE, of Arkansas. They could not sell what they had on hand, and they could not have sold what they might have manufactured.

Mr. HOOD. I have not said they could not sell it. I think the reverse is true. They have been selling it right along; that is, what was on hand.

Representative BURNETT. You mean some of that which was on hand at the time of closing down?

Mr. HOOD. Yes, sir; I think so.

Senator CLARKE, of Arkansas. Now, in borrowing money, is it not a question of the security you offer and not a question of favoritism? Is not that the rule in Alabama as well as elsewhere?

Mr. HOOD. Yes, sir; that is ordinarily true. I have known instances, however, where a person who was insolvent borrowed money of a friend.

Senator CLARKE, of Arkansas. Is that the kind of a deal you were trying to get through to save that plant, or did you expect to stand upon commercial solvency?

Mr. HOOD. No, sir.

Senator CLARKE, of Arkansas. How did you intend to secure the receivers' certificates if they had been put out?

Mr. HOOD. I did not intend to secure them.

Senator CLARKE, of Arkansas. How would anybody secure them so as to give them a commercial value?

Mr. HOOD. Two hundred thousand dollars of receivers' certificates were authorized by the judge to be issued and sold. I presume the receivers would have secured themselves by the purchase of receivers' certificates.

Senator CLARKE, of Arkansas. On what would they have been a lien? Could they take precedence of prior obligations?

Mr. HOOD. That is a disputed question. Some lawyers think a receivers' certificate is not a lien prior to the first mortgage on real estate. They all agree that receivers' certificates are a prior lien on the personal assets.

Senator BACON. I think there is no doubt about the fact that the Supreme Court has decided, originating first in a case in Indiana, or Illinois, I forget which, that receivers' certificates take priority of the first liens.

Mr. HOOD. That is true as to railroads.

Senator CLARKE, of Arkansas. That is true where the public has an interest in the conduct of the property, but I do not know whether it applies to the operation of a concern like this.

Senator BACON. The other point has never been decided.

Mr. HOOD. It is a moot question.

Senator CLARKE, of Arkansas. Upon what property did the court charge the lien?

Mr. HOOD. I do not believe I read the order.

Senator CLARKE, of Arkansas. You were watching the judge and not the orders?

Mr. HOOD. I watched the judge some. I heard his announcements, except the one made in the court room.

Senator BACON. Senator Clarke has pressed you pretty vigorously to know what was the particular objection you had to the appointment of these two receivers. I want to see if I understand your attitude.

I understand your criticism upon the judge's action to be that he appointed two men who were incompetent by reason of inexperience, and who were not in a position to render any aid in the maintenance of the property as a going concern, and that in so doing he selected two men who were his favorites, with one of whom he lived and to the other of whom he owed political obligations. Am I correct?

Mr. HOOD. That is it.

Senator BACON. It is the conjunction——

Mr. HOOD. That statement, reenforced by the fact that there were two men, one of whom he appointed, who would furnish the money, which fact had been made known to him.

Senator BACON. Pardon me a minute. As I understand, you do not base your objection simply upon the fact that these men were favorites of his?

Mr. HOOD. Oh, no.

Senator BACON. But upon the fact that in addition to being favorites they lacked the necessary qualifications?

Mr. HOOD. That is it.

Representative CLAYTON. And that both these Adlers were competent?

Senator BACON. And it is the conjunction of favoritism and incompetency?

Mr. HOOD. Certainly. Of course Mr. Adler declined to furnish the money after the other two men were put in there.

Representative BURNETT. Do you know about Judge Hundley having a mortgage on Mr. Thompson also?

Mr. HOOD. Not any more than you, gentlemen. I saw it in the newspapers.

Representative BURNETT. That was the common rumor at the time, that he had.

Mr. HOOD. Yes, sir; that is the talk in Alabama.

Representative RICHARDSON. The mortgage had been published in the papers before this thing took place?

Senator CLARKE, of Arkansas. I suggest that if any point is to be made of that a certified copy of the mortgage should be brought before the committee.

Mr. HOOD. I have seen a copy of the mortgage published in the newspapers.

(At 1 o'clock and 15 minutes p. m. the subcommittee took a recess until 2 o'clock p. m.)

AFTER RECESS.

At 2 o'clock p. m. the subcommittee reassembled.

STATEMENT OF OLIVER R. HOOD—Continued.

Representative BURNETT. Mr. Hood, you know Judge Hundley's reputation as a lawyer in the State?

Mr. HOOD. I think I have a fairly good idea of the way the bar esteem him. You mean as a lawyer?

Representative BURNETT. As a lawyer.

Mr. HOOD. He is not generally esteemed as a very able lawyer. That is my impression.

Representative BURNETT. Are there several strong, able Republican lawyers in that district and in that part of the State?

Mr. HOOD. Yes, sir; in that district there are several. Mr. Shelby Pleasants, of Huntsville, a nephew of Judge Shelby, who is on the circuit bench down there, a man of high character and a very good lawyer for his age, is one. He bears that reputation.

Senator DILLINGHAM. He was a candidate?

Mr. HOOD. I think the Birmingham bar indorsed him. When this position was vacant the Birmingham bar indorsed a young man named Smith, who was a Democrat, and as a Republican they indorsed Mr. Pleasants. That is my recollection. Am I correct in that?

Representative RICHARDSON. There was an indorsement made by the Birmingham bar of a young man.

Mr. HOOD. Ed. Smith.

Representative RICHARDSON. Mr. Smith. And then they indorsed Shelby Pleasants in addition. In the event of a Republican being appointed they wanted Shelby Pleasants.

Mr. HOOD. Mr. Pleasants's uncle, Judge Shelby, stands as high in Alabama, I presume, as any man in it.

Representative BURNETT. They have always been Republicans.

Mr. HOOD. Yes. I have never heard a criticism from any member of the bar in Alabama over the appointment of Judge Shelby or with respect to any of his judicial acts. This nephew of his—

Representative RICHARDSON. You refer to Judge David D. Shelby, of the court of appeals?

Mr. HOOD. His uncle. His nephew is a man generally regarded there as of equally high character as his uncle. He stands very high socially and in every respect, morally, and as a lawyer. He is respected by the bar generally in the State.

Representative RICHARDSON. Are you acquainted with the fact that when Judge David D. Shelby was an applicant for the position of judge on the court of appeals for the fifth circuit the two Senators, Morgan and Pettus, and every Member of the House of Representatives from Alabama indorsed him?

Mr. HOOD. I have been informed of that fact.

Representative RICHARDSON. Do you not know that David D. Shelby is a Republican?

Mr. HOOD. He has been a life-long Republican.

Representative BURNETT. He has been a member of the Alabama senate as a Republican. I knew him as such.

Mr. HOOD. Yes, sir. In addition to Mr. Pleasants, there were two men by the name of Smith. I believe one is J. A. W. Smith.

Senator BACON. There is one Edward D. Smith, of Birmingham.

Mr. HOOD. That is the young man I spoke of as being indorsed by the bar down there as a Democrat.

Representative BURNETT. He is speaking of Republicans now.

Senator BACON. Yes. Then there is W. H. Smith.

Mr. HOOD. J. A. W. Smith and W. H. Smith, who are sons of ex-Governor Smith, of Alabama. Ex-Governor Smith was a Republican from the time of the civil war. These young men were raised—

Senator BACON. He was governor of Alabama during the reconstruction period.

Mr. HOOD. During the reconstruction days. These young men were raised as Republicans. Their father before them was a man known all over the State and held in high esteem by everybody. He was a very able lawyer, and these two men are lawyers of ability and learning and of high character, and are generally esteemed in the State among the members of the bar.

In addition to these, the present district attorney of this district, Mr. O. D. Street—

Representative BURNETT. He ran against me twice for Congress.

Mr. HOOD. He is a man, I suppose, of 42, 43, or 44 years of age, and of exceptional ability, I think, as a lawyer. He stands very high at the bar. He is a man who is generally well esteemed by the bar of the State and by the people. There are four in that district.

Representative BURNETT. In regard to the signatures of quite a number of lawyers indorsing Judge Hundley, what is your information about those indorsements and how they were secured? What is your understanding of them?

Mr. HOOD. Of course, that would be hearsay; but I have had several lawyers in Birmingham state to me that Judge Hundley's father-in-law, Capt. Frank O'Brien, carried the petition around, and they were afraid—that was the expression—not to sign it. Down in Alabama a Federal judge is held in considerable awe among the bar. All you Alabama gentlemen will bear me out in that statement. Judge Hundley was on the bench down there. We had to practice law before him. Some of the lawyers represented large interests, and some of them have expressed themselves to me in that way. I do not say that is the general feeling, because I do not want to be unjust to Judge Hundley. I would not make a statement that was unjust to him; but at least those who have talked to me about it expressed the feeling that Judge Hundley was vindictive, and that if they refused to indorse him their clients would suffer.

I have had some members of the bar in Alabama tell me that if I came here before this committee and made the statements which I have, in connection with the Southern Steel Company, my clients, not only those I represent now, but those whom I may represent in

the future, would severely suffer. There is that feeling existing among some of the members of the bar, anyway.

He is on the bench, as I say, and while I did not indorse him—I was out of the State at the time—I might have done so if I had been there.

Representative BURNETT. I think that is all.

Senator CLARKE, of Arkansas. You did not indorse him?

Mr. HOOD. No, sir.

Senator CLARKE, of Arkansas. By letter or otherwise?

Mr. HOOD. I wrote him a couple of letters.

Senator CLARKE, of Arkansas. Did those letters contain the statement that he was not fit to be judge?

Mr. HOOD. No, sir. I would not insult him by such a letter. I have the letters here.

Senator CLARKE, of Arkansas. Of course, I mean in diplomatic terms.

Mr. HOOD. An article appeared in a paper in which I have a small interest.

Senator CLARKE, of Arkansas. Let me see those letters.

Mr. HOOD. And this article took Judge Hundley to task for the appointment of these receivers.

Representative BURNETT. This was an article in the paper?

Mr. HOOD. An article in the paper. In a paper in which I have a small stock interest, and my name appeared as vice-president of the company owning it.

Representative BURNETT. In your town?

Mr. HOOD. In my town. About the time that this article appeared my law partner had a law matter before Judge Hundley—

Representative CLAYTON. You have no connection with the editorial management or with the utterances of that paper?

Mr. HOOD. None whatever. My law partner had a business matter before Judge Hundley in his chambers, and Judge Hundley spoke to him about this article, and spoke to him in a way that led him to believe he thought I either had written the article or had inspired it. When he made that fact known to me I wrote the judge a letter, a copy of which I have here with me. This is it:

DECEMBER 11, 1907.

HON. O. R. HUNDLEY,

Judge United States Court, Birmingham, Ala.

MY DEAR SIR: My partner, Mr. Murphree, has just informed me of the conversation you had with him in Birmingham yesterday, concerning a certain article which appeared in the Gadsden Daily Times-News. From what you said to Mr. Murphree you made the impression upon him that you thought I either wrote this article or had something to do with its appearance in the paper.

I deem it my duty, not only to myself, but to you as well, to write you immediately, making known to you the fact that I did not write the article, had nothing to do with the writing of it, did not know it had been written, did not suggest it, nor in fact did I have any idea or intimation that this article or any other article touching the matter of Southern Steel Company, in any particular, or referring to any order you had made in the case pending against that company, or referring to you in any way, had been written, or was to appear in that, or any other paper; nor had I made any criticism of you or of any act of yours, or of any order made by you in that or any other case, to anyone connected with that or with any other paper, nor had I given any information to anyone connected with any paper from which the article in question or any other article could have been based.

I have been practicing law something over seventeen years, and never yet have I secured the publication of any article in any paper touching any case in which I have ever had any connection. It has never been my policy to try cases in newspapers, because I have always been of the opinion that it was wrong—unprofessional.

While I am, and have been for some time, vice-president of Times-News Printing Company, yet I only own a small batch of stock in that corporation, and never had any control whatever over the management of the paper, its editorial policy, or of what shall appear in its columns. I have not now and never had any control whatever over its editorial policy.

I will further add that I do not know from what source the Times-News Company got the information stated in the article published, or who, if anyone, suggested the publication of it, except that it appears on the face of the article that a goodly portion of it was copied from something that appeared in the Birmingham News. I believe it was.

I have thus written you at length so that any impression that may have been conveyed to you by some designing person, or from the fact that my name as vice-president of the Times-News Printing Company appears on that paper, that I in any way secured the publication of the article spoken of; may be unqualifiedly refuted and that the cordial relationship that has heretofore existed between us may not be interrupted.

Of all the judges before whom I have heretofore had any business whatever, I do not believe one can be found who will state that I have ever been guilty of any other than professional and courteous conduct.

Yours, very respectfully.

After I wrote that letter some of the directors of the Southern Steel Company met up with Judge Hundley somewhere, and they conveyed the impression to me that he threatened to have me up for contempt for the appearance of that article in this paper. But prior to that time I received this letter from him:

[Judge's chambers, United States district court, northern district of Alabama. Oscar R. Hundley, judge.]

BIRMINGHAM, ALA., December 12, 1907.

O. R. Hood, Esq.,
Gadsden, Ala.

MY DEAR MR. HOOD: I am just in receipt of your letter of December 11, for which I thank you. I am very glad indeed that you wrote me this letter, for I confess to you candidly that the fact that your name appeared as one of the officers of the paper which had published an article so much at variance with the truth gave me a very unfavorable impression of you. I accept your statement fully in the spirit in which you make it.

Being fully conscious that every act of mine in the matter referred to has been from the highest desire to serve the best interests of all parties concerned in the litigation—

“All parties concerned” underscored—

I care nothing for the false representations of me in the newspapers; but I could not and would not treat lightly any such matters which were inspired by a member of the bar who is an officer of my court.

The article he refers to is the article which has been filed here, I am told.

Representative BURNETT. Judge Richardson called attention to it at the last meeting.

Mr. Hood. The letter continues:

I must correct one statement in your letter, that the article, or any portion thereof, was copied from the Birmingham News, because such was not the fact. Your statement absolves you fully from any unpleasant reflection I might have had growing out of the fact of your connection with the Gadsden paper.

With sincere regard, I beg to remain,

Very truly, yours,

OSCAR R. HUNDLEY.

In response to that I wrote him this letter:

DECEMBER 16, 1907.

Hon. O. R. HUNDLEY, *Birmingham, Ala.*

MY DEAR SIR: Upon my return home I found your letter of the 12th instant, for which I thank you.

Upon investigation I find that I was mistaken in saying in my former letter that the paper here had taken a goodly portion of the article referred to from the Birmingham News. It seems that it was taken from the Birmingham Times.

In view of certain articles that have appeared in one or more of the Birmingham papers since writing you, I deem it proper to say to you that I have in no way had any connection with nor have I procured or suggested to anyone the publication of said articles, nor have I joined with others or made any effort whatever to defeat your confirmation.

That was absolutely true up to that time. I had received letters from Judge Richardson here; I had talked with and had received letters from Mr. Burnett, and I had refused to answer them, and told Mr. Burnett that I did not care to take any part in this matter; that I felt he was going to be confirmed, and that I felt, furthermore, that I might prejudice myself and the interests I represented down there by appearing here.

I did not know that such an effort was to be made until I read it in the Birmingham Age-Herald of Friday, I believe it was.

I had heard the talk, but I did not know that an actual fight was going to be made.

Persons have been to see me, both from Birmingham and elsewhere, some of whom you think are your friends, in an effort to induce me to join with them in making a fight on you. I have not only declined to join them, but I have declined to make any statement which would in the least reflect upon you.

I have known for sometime that you had reasons for not appointing both of the Adlers as the sole receivers of the Southern Steel Company. Information has been conveyed to me that some one of or more persons had protested against the appointment of both these men, charging that they had an ulterior motive in trying to be made receivers. If you believed, or even feared, that such was the case, no one could justly censure you in not appointing both of them as sole receivers.

Now, that information came from Judge Hundley. I have understood that he claimed that he received letters and telegrams, or perhaps telephone messages, from Birmingham or somewhere; I say Birmingham, I will not say where, protesting against their appointment, and suggesting that they had some ulterior motive. I have never heard it from any other source.

I was exceedingly anxious about the personnel of the receivers, for the reason that the stockholders had made known to me the fact that they intended to put the company back on its feet, if possible, settling in full with all the creditors as quickly as they could reasonably do so after the financial situation assumed a normal condition, and the company had been adjudicated a bankrupt, when the creditors could contract with the company in settling their claims, but which can not well be done before the happening of that event. The stockholders were exceedingly anxious that the plants should all be kept in operation so that the properties of the company and its business would be interfered with as little as possible at the time they were able to raise the money necessary to put the company back on its own feet. They have never for a moment considered that the company was insolvent or that creditors would have to resort to any harsh measures to collect their debts, but have all along intended, and do now intend, to put the company back on its feet as soon as they can do so, the present financial condition being considered.

The stockholders do not ask and have never expected that receivers would be appointed who would sacrifice the interests of creditors in serving them. The receivers have found it impracticable to operate the plants. So the thing for all to do now is to get the company back on its feet, which will necessitate a satisfactory settlement with the creditors. In making this effort, which will subserve the interest of all concerned, we feel that we have your unqualified support.

With sincere regards, I beg to remain,

Yours, very respectfully,

In reply to the statement contained in his letter, that he thought he was going to conserve the interests of all concerned.

Those letters are the only letters I have written Judge Hundley since his appointment. I have written him no letter exonerating him, whitewashing him in this proceeding, or admitting that he properly appointed these men receivers.

Senator CLARKE, of Arkansas. Do you think he got the impression from reading that letter that you would be satisfied with anything he did?

Mr. HOOD. I do not know, Senator, whether he did or not.

Senator CLARKE, of Arkansas. There is a thing you probably will know. You say that—

Mr. HOOD. Let me answer you.

Senator CLARKE, of Arkansas. Certainly.

Mr. HOOD. I confess to you that I did not file any petition or make any protest such as a lawyer would have done had he sought to have those receivers displaced or removed.

Senator CLARKE, of Arkansas. You speak in that letter about persons applying to you, some of whom the judge thought were his friends, in an effort to induce you to join with them in making a fight on the judge. Who are those persons?

Mr. HOOD. I decline to make the statement. I do not think it is right.

Senator CLARKE, of Arkansas. Very well.

Mr. HOOD. I do not want to drag anybody into this case—

Senator CLARKE, of Arkansas. Let the record show the declination.

Mr. HOOD. I decline to make the statement because I do not want to drag persons into this hearing or this proceeding who have not indicated a willingness to be dragged in.

Representative CLAYTON. Why?

Mr. HOOD. I do not think it would be right. It may be that those people treated the statements to me as confidential matters. Certainly they expected that I would not communicate them to Judge Hundley or to anybody who would.

Senator CLARKE, of Arkansas. Whom did you indorse for judge?

Mr. HOOD. I believe I indorsed Ed. Smith.

Senator CLARKE, of Arkansas. Is he the Democratic circuit judge down there?

Mr. HOOD. Oh, no; he is a lawyer in Birmingham. He is not a judge.

Senator BACON. Mr. Hood, at the time when it was first known that this vacancy was to be filled there were a number of aspirants for it, were there not?

Mr. HOOD. There were quite a number mentioned.

Senator BACON. They got up petitions, did they not; recommendations, etc.?

Mr. HOOD. Some did.

Senator BACON. Of course.

Mr. HOOD. I recollect with reference to Mr. Smith. I think his brother-in-law phoned me, asking me to write him a letter of indorsement perhaps, and, I think, Mr. Hundley was an applicant, as I recall it.

Senator BACON. And Mr. Pleasants?

Mr. HOOD. Mr. Pleasants, Mr. Smith, the gentleman I mentioned a while ago, and possibly several others, and the names of several Democrats were suggested.

Representative CLAYTON. Smith, of Birmingham?

Mr. HOOD. Yes, sir. I heard his name suggested.

Senator BACON. Among the Republicans suggested for the place and for whom recommendations were got up, who do you understand was the choice of the bar? Who was the more favored?

Mr. HOOD. I am of the opinion that Mr. Shelby Pleasants received greater indorsement than any other one, perhaps. I should say either he did, or Mr. William Smith. However, I have never seen any list, you know.

Senator BACON. Give us just a general impression.

Mr. HOOD. I have never seen a list of the indorsements. I have never gone through them.

Representative RICHARDSON. Do you know of any bar which at that time indorsed Mr. Hundley?

Mr. HOOD. No, sir; I do not.

Senator BACON. These indorsements of him have all been procured since he has been on the bench?

Mr. HOOD. My information is that most of them have been; certainly the petitions and letters and other documents requesting his confirmation have been procured since then.

Senator CLARKE, of Arkansas. You said that Frank O'Brien, Judge Hundley's father-in-law, had carried around the petition.

Mr. HOOD. No, sir; I do not make that statement of my own knowledge. I have heard it said. Mr. Benners, perhaps, could answer the question.

Senator CLARKE of Arkansas. I understood you to say that the petition was carried around by Frank O'Brien and that persons to whom it was presented were afraid not to sign it.

Mr. HOOD. I said the information had been conveyed to me, and I had heard some gentlemen make that statement.

Senator CLARKE, of Arkansas. Why should they be afraid of Frank O'Brien?

Mr. HOOD. They were not afraid of him. He had no——

Senator CLARKE, of Arkansas. No powers of thunder.

Mr. HOOD. No powers of thunder to strike. Of course those matters were mere hearsay, except, as I say, some members of the bar have told me.

Representative RICHARDSON. Do you know how many times Hundley has been an applicant for district attorney and Federal judge?

Mr. HOOD. I do not know that I could give you the number of times. I have heard his name suggested in connection with the Federal judgeship for quite several years.

Representative BURNETT. Mr. Ed. Dryer, of the Talladega bar, is a very able man. Is or is not he a Republican? I really do not know. He was a Gold Democrat and, I think, went to the Republicans.

Mr. HOOD. I think I heard his name suggested as an applicant.

Representative BURNETT. I know he was an applicant. He talked to me about it.

Mr. HOOD. For the judgeship; and I heard that he had the indorsement of Booker Washington. But whether he is a Republican or a Democrat I do not know. I am inclined to think that he is rather inclined to the Republicans. He is a lawyer of some considerable ability and a man of good character.

STATEMENT OF MORRIS ADLER.

Mr. MORRIS ADLER appeared before the committee.

Senator DILLINGHAM. Mr. Adler, you live at Birmingham?

Mr. ADLER. I do.

Senator DILLINGHAM. Your business is what?

Mr. ADLER. I have not been in business for about a year. I was formerly in the coal and iron business; the blast-furnance business.

Senator DILLINGHAM. We have asked certain gentlemen to come before us to-day to give us any information in their possession regarding the question of the confirmation of Judge Hundley, and we shall be glad to have you make any statement you see fit bearing upon that question.

Representative BURNETT. He knows only in regard to the receivership question, Mr. Chairman.

Senator DILLINGHAM. He may state that.

Representative BURNETT. In regard to the receivership of the Southern Steel Company.

Mr. ADLER. Shall I state the beginning of the negotiations for me to accept the receivership?

Representative BURNETT. Yes.

Mr. ADLER. I was in New York some time in the latter part of September, and I was asked to meet some gentlemen with a view of furnishing some capital for the Southern Steel Company, and we, two of us, agreed that we would provide \$1,000,000 if they could make a satisfactory showing. Mr. Lacey, who was one of the directors, and the man who seemed to be in charge of the finances, came to Birmingham, and I turned the proposition down, as a million dollars was not sufficient capital. Then he asked me if I would accept the receivership, which I declined to do, and declined on a second occasion. Then, on account of local interests there, which were creditors to the extent of about \$600,000, I finally concluded to accept it if my brother and I were appointed.

Senator BACON. Give the names of the two firms?

Mr. ADLER. Crocker Brothers, of New York, agreed to provide half a million and Adler & Brother, of Birmingham, agreed to provide a half million, provided the company could make a satisfactory showing. Application was made for a receiver, and my brother, Edgar Adler, was appointed, with two others. But we declined to loan money to be handled by other parties.

Representative BURNETT. What was your ability to furnish money to run the plant, Mr. Adler?

Mr. ADLER. Adler & Co. were prepared to loan up to \$250,000 then.

Representative BURNETT. At that time; and, in your judgment, would that have kept the plant going for some time?

Mr. ADLER. We estimated that \$200,000 would be sufficient, although we were prepared to loan \$250,000. They could have run for some time on that. However, it would not have been required on account of the conditions that set in afterwards.

Representative BURNETT. Did you make that fact known to the creditors, or any of them, or the attorneys for the creditors?

Mr. ADLER. The local creditors in Birmingham were holding a meeting, and they sent for me to know what information I could give them. I told them the statement which I saw, which was about six weeks previous, showing that the concern owed over \$3,000,000 of floating debt, and their assets showed only about \$2,400,000 of quick assets. They wanted to know, if my brother and I were appointed receivers, whether we could not raise the money to operate. I told them we could not raise it. No one could raise a large amount of money then, which was the 25th of October, on account of the financial condition. But my firm could put it up out of its own resources.

Representative BURNETT. You had it available?

Mr. ADLER. Yes, sir; we did.

Representative BURNETT. You consented that yourself and your brother might be suggested as receivers to Judge Hundley?

Mr. ADLER. Yes, sir; we did.

Senator CLARKE, of Arkansas. How long have you been engaged in the coal business?

Mr. ADLER. We have been in the coal business five or six years.

Senator CLARKE, of Arkansas. What business had you been engaged in before that time?

Mr. ADLER. I was formerly a wholesale grocer, but I have been out of business for several years, trading, principally in coal land.

Senator CLARKE, of Arkansas. What particular branch of the coal business were you actually personally engaged in?

Mr. ADLER. I was only in the office.

Senator CLARKE, of Arkansas. You never have had any experience in mining or smelting iron ores? I mean actual personal experience.

Mr. ADLER. No, sir; only in the office.

Senator CLARKE, of Arkansas. You financed it?

Mr. ADLER. I had a good deal to do there.

Senator CLARKE, of Arkansas. What knowledge you have of the business was obtained in the five years you were engaged in it?

Mr. ADLER. Yes, sir; my brother and I.

Senator CLARKE, of Arkansas. What particular branch of the business did you undertake when you first went into it? About the same that you did last?

Mr. ADLER. Well, just about the same. I did the trading generally for the concern.

Senator CLARKE, of Arkansas. You were the trading member of the firm?

Mr. ADLER. Yes, sir.

Senator CLARKE, of Arkansas. You say you were in New York consulting about this matter in September prior to the application for receivers. Were you not then negotiating for the purchase of the property or an interest in it?

Mr. ADLER. No, I was not. I had returned from Europe and called on Crocker Brothers, who had been our agents there, and just

before leaving—I was going to leave for home—they sent up to the hotel—that is, one of them visited me, and asked me to come down the next day, that they had something attractive to offer.

Senator CLARKE, of Arkansas. What was that?

Mr. ADLER. They said there was a concern in Alabama that wanted a half million dollars, and wanted to know if we were prepared to go into anything? I told him we were. He said what it was, and said they would put up \$250,000 if we would put up a like amount, and my brother and I take an active interest and agree to stay with it as long as they had the money invested.

Senator CLARKE, of Arkansas. Did you propose to loan money to the company, or to buy that much stock in the company?

Mr. ADLER. They wanted to sell us stock, but the intention was if we did anything at all we would loan them the money and take an option on the stock.

Senator CLARKE, of Arkansas. That was to buy the concern?

Mr. ADLER. Yes, sir.

Senator CLARKE, of Arkansas. A proprietary interest. It was not a mere money-lending interest?

Mr. ADLER. Yes, sir.

Senator CLARKE, of Arkansas. Now, when it reached a point where a receiver had to be appointed, was the receivership by itself, disconnected from the proposition to lend this money, an attractive employment to you?

Mr. ADLER. No; it was not. We refused to accept the receivership for the fees in it.

Senator CLARKE, of Arkansas. But by blending a loaning proposition with the receivership proposition it became attractive?

Mr. ADLER. Not even then. We consented to take the receivership on account of the local interests.

Senator CLARKE, of Arkansas. What was the character of that local interest?

Mr. ADLER. There were merchants and banks and coal companies there which had sold it coal and coke.

Senator CLARKE, of Arkansas. They were such debts as would have to look to what was left after the lien debts were paid?

Mr. ADLER. Sir?

Senator CLARKE, of Arkansas. Such debts as would have to look to the equity of redemption or what was left after the lien debts had been satisfied?

Mr. ADLER. Yes, sir.

Senator CLARKE, of Arkansas. Did the advancement of \$250,000 contemplate not taking security for it?

Mr. ADLER. No. I would only have loaned it on receivers' certificates, conditioned that the order was made at the same time that the money was to be repaid as soon as it was realized out of the goods which were to be marketed.

Senator CLARKE, of Arkansas. Then the receivers' certificates were to constitute a prior lien?

Mr. ADLER. On the personal property; yes, sir.

Senator CLARKE, of Arkansas. Why did you not lend the money anyway, after your brother was appointed?

Mr. ADLER. Because other people would have controlled it.

Senator CLARKE, of Arkansas. What do you mean by that?

Mr. ADLER. Mr. Thompson and Mr. Chandler, the coreceivers.

Senator CLARKE, of Arkansas. Then it is a fact that the disbursement and control of the money was a matter of importance to the lender?

Mr. ADLER. Yes, sir.

Senator CLARKE, of Arkansas. And constituted a prominent inducement as to the acceptance or rejection of the receivership?

Mr. ADLER. I did not consider that they had the business capacity to run a business like that. One of them has been a cotton planter principally, the other running a commissary store, which never carried a stock of \$8,000.

Senator CLARKE, of Arkansas. Had you not been a grocery merchant, and yet you ran one successfully?

Mr. ADLER. Yes, sir.

Senator CLARKE, of Arkansas. Why did you assume that you would know more about it than these other gentlemen?

Mr. ADLER. I had been very successful in the coal and iron business.

Senator CLARKE, of Arkansas. But you had to try it to find that out?

Mr. ADLER. Yes, sir; I did.

Senator CLARKE, of Arkansas. Would not that same objection have laid against you when you first went into it, that you then made against Mr. Thompson?

Mr. ADLER. I had money then, but I did not want to loan it on long time.

Senator CLARKE, of Arkansas. Does having money make you know any more about the coal business than if you did not have any?

Mr. ADLER. If you go by success, I suppose it does.

Senator CLARKE, of Arkansas. Suppose you had made your money gambling in futures in cotton. Would that enlighten you in any way about silver mining or gold mining or coal mining?

Mr. ADLER. I have not gambled in cotton.

Senator CLARKE, of Arkansas. I have not said that you did.

Mr. ADLER. I do not trade in futures or in stocks.

Senator CLARKE, of Arkansas. Suppose you had inherited your money, then?

Mr. ADLER. I did not do that.

Senator CLARKE, of Arkansas. I am merely assuming a case to find out what connection there is between having a lot of money and knowing a lot about the coal business. What is the connection between the two things? Why should not a man without money, with the same intelligence and the same opportunities, know as much about the theory and practice of coal mining as one of the same kind who has a lot of money?

Mr. ADLER. I had a brother who did the practical work in our business, and he was a good hand at it.

Senator CLARKE, of Arkansas. Was he the one who was appointed receiver?

Mr. ADLER. Yes, sir.

Senator CLARKE, of Arkansas. He was a practical man, and he was appointed receiver.

Mr. ADLER. Yes, sir.

Senator CLARKE, of Arkansas. And yet you were not willing to let him direct the investment of the money?

Mr. ADLER. Yes; I would have been willing for him to do it. I thought that two being the majority, they would control.

Senator CLARKE, of Arkansas. Did you not know also that neither one of them could control in opposition to the direction of the court and the supervision of the attorneys?

Mr. ADLER. Repeat that, please.

Senator CLARKE, of Arkansas. Do you not know that neither one of the receivers nor all of them combined could control the proposition in opposition to the direction of the court and the supervision of the attorneys?

Mr. ADLER. I thought that Mr. Thompson could control, as the judge stated in the appointment that he was somebody he had confidence in.

Senator CLARKE, of Arkansas. Is that objectionable in a receiver?

Mr. ADLER. To handle my money it would be.

Senator CLARKE, of Arkansas. Did you not agree to let him handle \$75,000 of your money if they could raise \$150,000 of their own?

Mr. ADLER. Yes, sir.

Senator CLARKE, of Arkansas. You had \$75,000 worth of confidence, but you did not have \$225,000 worth. Is that it?

Mr. ADLER. I knew at the time, or I was satisfied at the time, that they could not raise it.

Senator CLARKE, of Arkansas. Then you did not make the offer in good faith?

Mr. ADLER. I was ready to put up the money.

Senator CLARKE, of Arkansas. If they had called your hand?

Mr. ADLER. Yes, sir; if they had called my hand.

Senator CLARKE, of Arkansas. You just bet that much that they could not do it?

Mr. ADLER. There were people there who were trying to trade them to get them out of the receivership.

Senator CLARKE, of Arkansas. Now, explain that. Explain how they were trying to get them out of the receivership. That is a new feature in the receivership.

Mr. ADLER. I will go back a little, if you will allow me.

Senator CLARKE, of Arkansas. Oh, yes, take your time.

Mr. ADLER. When we heard in Birmingham of the appointment of my brother with Thompson and Chandler, my brother was going to wire to Mr. Benners that he would not serve, knowing that he could not make a success without putting up money, and we were not going to put up money for the others to handle. Local interests in Birmingham—that is, a gentleman who seemed to be one of the chief men in handling the creditors there—begged him not to send the telegram, saying that Thompson and Chandler were only after the fees and they would trade out with them. So my brother withheld the telegram and when Mr. Chandler returned negotiations were set on foot in a few days.

Senator CLARKE, of Arkansas. Then before you agreed to let them have \$75,000, to be managed by the trio—

Mr. ADLER. My brother. I called for my brother one evening in going home. He was stopping with me at the time. I got there just as he told the receivers that they had to raise some money. Mr. Thompson wanted to know: "Can you not get it out of what you

have got here? Can you not collect it?" "You can not rely on that," my brother said. "We must have \$16,000;" and Mr. Thompson offered me some receivers' certificates and I declined to take them, and he looked as if he thought I was trying to discredit them. I told him, "not that I think these certificates are not good; I think they are good; but I do not want them." Then he said, "We shall raise the money," and he and Chandler went out. I went home. After a while he telephoned my brother it was too late; that they would attend to it Monday. They tried all day Monday and never raised a dollar.

Then it was thought by somebody that if I would make a proposition to put up some money, they not being able to raise any, they would still be able to trade with them.

Senator CLARKE, of Arkansas. Trade them out of the receivership by giving or securing them an amount equal to the commission?

Mr. ADLER. Yes; I will tell that, too.

Senator CLARKE, of Arkansas. Yes; tell that.

Mr. ADLER. My brother asked me that evening to meet them the next morning at 9 o'clock. I told him I did not care to go there unless I was telephoned for. But I went. Before promising any money I went to the bank, and as the banks at Birmingham had limited withdrawals, and as the banks in New York had gone on a clearing-house certificate basis, I went to prepare myself. I got the bank to write me a letter that they would cash my checks for \$75,000, which letter they did write, provided the money was to be used to pay the labor off.

The next morning, upon the call of my brother over the telephone, I went to his office, and I met Mr. Thompson on the way there. He said he would be up directly, but he did not show up, and I finally heard that he was going up to Huntsville. I went to the depot and met him there. I told him that before offering to put up any money I wanted to get something from the bank in writing; and I showed him what I had.

I said: "Now, Adler & Co. will loan one-third of \$200,000 if you and Mr. Chandler will provide the balance." He asked me to loan the \$75,000, and I told him I would not do it without a written agreement as to how it was to be handled.

Senator CLARKE, of Arkansas. What was the agreement?

Mr. ADLER. He did not ask me.

Senator CLARKE, of Arkansas. What did you intend to propose to him?

Mr. ADLER. I was not going to propose anything. I was going to let the creditors do the talking then.

Senator CLARKE, of Arkansas. I thought you said you made the offer as a foundation for getting them out of the receivership?

Mr. ADLER. Yes; but somebody else would have to do that. The creditors did negotiate with them before Adler & Co. would loan the money.

Senator CLARKE, of Arkansas. And they would step out of the receivership or only have a nominal connection with it?

Mr. ADLER. The proposition was made that we could run the thing if we would put up the money and give them two-thirds of the receivers' fees and two-thirds of the trustees' fees, and Mr. Chandler proposed to resign, but Mr. Thompson would not.

Representative BURNETT. Who was it who made that proposition? You say "they."

Mr. ADLER. One of the creditors, Mr. John E. Morris—

Senator CLARKE, of Arkansas. It was done with your knowledge?

Mr. ADLER. Yes, sir.

Senator CLARKE, of Arkansas. Why would the proposition to advance \$250,000 be attractive to you when you were only to receive one-third of the fees of the trusteeship? Was not there some indirect way by which you were to recoup the loss of that two-thirds in the handling of the business of that vast plant?

Mr. ADLER. We did not go into that, but I was satisfied that the creditors would compensate us, and the reason I wanted to do it was particularly on account of two banks, and one of them we saved from failing several years ago.

Senator CLARKE, of Arkansas. Would you not also have to take care of more than \$3,000,000 of floating debt, in order to help out the \$600,000 due at Birmingham?

Mr. ADLER. Of course. They would all have been on the same basis, so far as the assets are concerned.

Senator CLARKE, of Arkansas. Was not your whole connection with the concern based upon a purpose to become interested in that property as one of its proprietors?

Mr. ADLER. No, sir.

Senator CLARKE, of Arkansas. Did you not think of buying it?

Mr. ADLER. No, sir; we turned it down. We had considered it and turned it down. While it was worth more, we could find a better bargain than to take it subject to the mortgage debt of \$5,500,000.

Senator CLARKE, of Arkansas. Do you want now to make the statement that, in order to help \$600,000 of local creditors, you proposed to provide a fund of \$250,000 and to devote your time, which fund must take care of over \$3,000,000 of floating indebtedness, in order to be of any service to the \$600,000 of local indebtedness?

Mr. ADLER. No. We would have got the money back within sixty days with ordinary conditions, or certainly within four months.

Senator CLARKE, of Arkansas. Why did you not advance it to your brother if you seemed to know so definitely that it was a safe loan?

Mr. ADLER. Because there were two other receivers who would control him.

Senator CLARKE, of Arkansas. Did they suggest any probable use of the money that he disapproved of?

Mr. ADLER. It never came to that.

Senator CLARKE, of Arkansas. Where must the money have been used in order to insure its return within four months?

Mr. ADLER. The idea was to keep the labor together. That is the great trouble in our country, and it has been, to keep labor for these plants.

Senator CLARKE, of Arkansas. Did either Thompson or Chandler propose to disperse the labor?

Mr. ADLER. No. But in order to keep the labor together, in order to keep it from going to other works, as soon as we heard of our appointment we would telegraph around to the eighteen different works that the company had advising them that Adler & Co. would loan the money to pay off the money that had accrued the night before, and

would pay it off just as quickly as the pay rolls could be made out. That was estimated to require from about \$115,000 to \$120,000.

Senator CLARKE, of Arkansas. Then, how would you get that \$115,000 back if it was invested in labor which had already been performed?

Mr. ADLER. We would have had the goods. Then the concern had a great deal of wire, fence wire and barbed wire, nails——

Senator CLARKE, of Arkansas. Why was not that sold instead of borrowing money?

Mr. ADLER. It takes time to sell it and it is sold on time, and the conditions were bad then. People could not pay for what they already owed. They were borrowing.

Senator CLARKE, of Arkansas. No new orders were being taken for goods of that character?

Mr. ADLER. No, sir.

Senator CLARKE, of Arkansas. Then you would have gone on manufacturing the same kind of goods that you had in surplus quantities?

Mr. ADLER. If we had been appointed receivers the intention was to manufacture only what products they had at the rod and wire mill—that is, the material they had in course of manufacture and part of what they had in the steel mill at Gadsden.

Senator CLARKE, of Arkansas. And then quit?

Mr. ADLER. Then close that down, but operate two blast furnaces as long as there was a profit, using, of course, the cheapest iron ore and the cheapest coke they could produce, which could have been done to this day.

Senator CLARKE, of Arkansas. Then your refusal to put up the money resulted from the fact that Mr. Thompson refused to join Mr. Chandler in resigning? That was the final basis upon which the refusal was made?

Mr. ADLER. We refused it because we could not control it.

Senator CLARKE, of Arkansas. Your brother could not control it?

Mr. ADLER. He could not control it.

Senator CLARKE, of Arkansas. Did he make any effort and find himself overruled by his coreceivers?

Mr. ADLER. He never let things come to that point. They got along very smoothly. If he could have controlled them he would not have allowed the operations to be continued at Gadsden as long as they were.

Senator CLARKE, of Arkansas. He would have shut down before that?

Mr. ADLER. Yes, sir.

Senator CLARKE, of Arkansas. So the shutting down there was not at the suggestion of Thompson and Chandler, but his suggestion?

Mr. ADLER. I do not think he suggested it. He was only one receiver out of four, and there was no use to have a different——

Senator CLARKE, of Arkansas. You say he would have closed the Gadsden mill before it was closed down if he had had his say?

Mr. ADLER. Yes. The stuff they manufactured there was manufactured at a loss.

Senator CLARKE, of Arkansas. So that the Southern Steel Company ran its business at a loss?

Mr. ADLER. It had been, but still if it had all been under one receivership, using the cheapest produced ores and the best ores and the

cheapest produced coke and the best coke, and a very cheap pig iron, and if they would not attempt to run more than two blast furnaces——

Senator CLARKE, of Arkansas. Did your brother tell all this to the other receivers and find himself overruled by them?

Mr. ADLER. It was not necessary to suggest it, because the property which contained the cheap ore and the best ores was in the hands of another receiver, and the property that produced the cheapest coke was in the hands of still another receiver in a different State.

Senator CLARKE, of Arkansas. So even if you had succeeded in buying out Thompson and Chandler you would have had these other receivers to deal with?

Mr. ADLER. The one in Tennessee would have turned right over to us.

Senator CLARKE, of Arkansas. You had an arrangement made with him?

Mr. ADLER. I had not.

Senator CLARKE, of Arkansas. Somebody had.

Mr. ADLER. The people of the Southern Steel Company——

Senator CLARKE, of Arkansas. It seems to me there were a good many agreements going around there that were not entered of record.

Mr. ADLER. Yes; I suppose there were.

Senator CLARKE, of Arkansas. That is all.

Representative BURNETT. Instead of raising their \$150,000, they went right on to Huntsville and tried to get your brother removed?

Mr. ADLER. I remarked to Mr. Thompson, "Are you going to Huntsville?" He said he was. I said, "What are you going there for?" He said, "I am going to get instructions from the judge;" and the next day the papers were served on my brother to have him removed, and he was telegraphed to come to Huntsville.

Senator CLARKE, of Arkansas. Judge Hundley did not remove him on the hearing on that petition?

Mr. ADLER. No; he did not. He just appointed a fourth receiver.

Senator DILLINGHAM. Who was the fourth receiver?

Mr. ADLER. Mr. Bush.

Senator CLARKE, of Arkansas. Is he a lawyer?

Mr. ADLER. No, sir; he is not. He is a man who has been successful and has produced very cheap pig iron.

Senator CLARKE, of Arkansas. Why did he not advance the money? Was he not in on the deal?

Mr. ADLER. There was no deal.

Senator CLARKE, of Arkansas. I mean was he not in on the proposition to get Thompson and Chandler out of the receivership?

Mr. ADLER. No; I do not suppose he was. I understood from the papers that he wrote to Judge Hundley that he saw no reason why he could not finance it, although my brother informed me that they never raised a dollar; never borrowed a dollar, at least.

STATEMENT OF HERSCHEL V. CASHIM.

Mr. HERSCHEL V. CASHIM appeared before the subcommittee.

Representative RICHARDSON. Where do you reside?

Mr. CASHIM. I live at Decatur, Morgan County, Ala.

Representative RICHARDSON. What is your business?

Mr. CASHIM. I am engaged in practicing law.

Representative RICHARDSON. What Federal positions have you held?

Mr. CASHIM. I was at one time a postal clerk in the railway mail service; for the seven or eight years preceding 1905 I was the receiver of public moneys of the United States land office at Huntsville, Ala.

Representative RICHARDSON. You held the last office two terms?

Mr. CASHIM. I held the last office one term and until it was abolished by operation of law.

Senator BACON. How long?

Mr. CASHIM. Seven years and eight months, I think.

Representative RICHARDSON. Your office was located at Huntsville, Ala.?

Mr. CASHIM. Huntsville, in the Eighth Congressional district.

Representative RICHARDSON. Will you be so kind as to go on without any questions from me and tell these three gentlemen, constituting the subcommittee, about Mr. Hundley and what you know?

Mr. CASHIM. Now, gentlemen, must I confine myself to the rules of evidence, or am I permitted to state my case in my own way?

Senator BACON. State it in your own way.

Mr. CASHIM. I do not think Mr. Hundley ought to be confirmed, nor did I think he ought to be appointed as United States judge. I did not think he ought to be appointed, and I do not think he ought to be confirmed because it is an office which has directly to do with my status as a citizen. The danger resulting from Mr. Hundley's appointment became to me very apparent when he was in the legislature of Alabama.

The present constitution, I may be permitted to say, has a provision like this: That schools shall be provided for both races, but they shall be of equal terms of duration, as nearly as practicable.

The constitution of 1875, which was the work of Democrats, and I may say of Democrats who would be the flower of the knighthood of Democracy, whatever that may mean, contained a provision something like this:

Schools shall be provided for both races, or for the children of both races, but they shall be of equal duration.

The difference is apparent. At the last legislature Mr. Reynolds, who was the author of a compulsory school bill, presumably in reply to the charge that compulsory education would force the negro children into the schools, said, substantially, that the bill would not apply to the negroes because there were not more than four counties in the State of Alabama where the negro schools were of longer duration than four months. I did not think it would be well to appoint a man unsound upon those questions; and I went to the President of the United States with my complaint. I told the President that I desired to protest against the appointment of what I thought to be an improper person for that office. The President asked me my objections. I told him my objections were too numerous to intrude upon his time, but that I thought I ought to state the one principal objection, and that was his relation to a proposed amendment to the constitution of Alabama known as the Hundley amendment, whereby the benefits of government were to be apportioned upon race lines and according to the taxes paid. The Presi-

dent told me it was a conclusion of mine. I told him it was a conclusion, but I was using the words practically of the then governor of Alabama, whom he has since appointed as United States district judge. He then turned to Mr. Loeb—I do not think, gentlemen, I am violating any confidence—

Senator DILLINGHAM. We have the paper which you filed with the committee, giving your reasons, if you care to have it go into the record.

Mr. CASHIM. The President called for the proofs—no; Mr. Loeb stated—permit me to finish that sentence—that Mr. Hundley said he was not the author of the objectionable feature of this proposed amendment of the constitution, but that he had introduced a bill providing better facilities for both races, but that when it went into the lower branch of the legislature this objectionable amendment was tacked onto it, and that he did not have the strength to defeat it. I then said, if that was true, my objection to Mr. Hundley on that score fell to the ground. The President demanded proofs. I took the proofs to Mr. Loeb and he told me to take them to the Attorney-General. I sent the paper, a copy of which I have filed here, to the Attorney-General, accompanied by a certified transcript of the record by the secretary of state. I have never received any acknowledgment whatever of the receipt of that document.

I now want to say that Mr. Hundley, in the State of Alabama, offered his amendment in 1890, I think, on the 12th day of November. It provided that the moneys collected from persons of the white race should be applied exclusively to the education of children of the white race and moneys collected from persons of the black race should be applied exclusively to the education of children of the black race. That resolution was defeated. That was the 18th of November, 1890.

On the 18th of November, 1892, Mr. Hundley introduced another resolution, and in the paper I filed here I cite the pages. And that resolution provided that the moneys "may be." It is different from the first, in that it used the word "may" instead of the word "shall." That resolution was adopted.

The then governor of Alabama, Governor Jones, returned it to the legislature with his objections, citing the constitutional objections to it; all of which I cited in the paper I mailed to the Attorney-General.

That was then voted upon at the election of 1894, and was defeated at the polls, and I regarded the fight then as the fight between the conservative Democrats of the State and the reactionary ultra Democrats of the State. They were then led by Mr. Hundley.

Gentlemen, I want to state here that I am solicitous about this matter because I live in Alabama. I have six children. My children have been raised there and I have tried to bring them up in proper admonition as to their conduct. I want to live honestly with all men, white and black. I have been treated with that courtesy up to this time in all matters nonpolitical by the white people of that State, and I want the children who follow me to have the same consideration. I realize that it is necessary that my conduct shall set them an example, and it is because of my solicitude regarding them that I have come here to present my protest against Mr. Hundley.

Now, to take up again, if I can, where I left off, after this proposed amendment was defeated at the polls, at the very next session of the legislature, early in the session, Mr. Hundley introduced another proposed amendment to section 2, article 11, of the constitution, making the very same proviso as to the funds received as in the other. That, on a motion of a conservative Democrat, was tabled.

On the 5th of December, the following month, he introduced a second resolution, making four resolutions, all of them providing that the funds collected from the people of the white race should be applied exclusively to the education of children of the white race and that the money collected from the black race should be used exclusively for the education of children of the black race. That was in 1895 that the last Senate resolution was offered by Mr. Hundley.

I do not know why, and it is not my business to say, but Mr. Hundley seemed to have lost favor in his own party. I have a strong suspicion that it was because the conservative element was about to succeed as against the reactionary element in that State; at all events, Mr. Hundley lost caste with his party. So it seemed to me. That testimony must come from the other side.

In June of 1896, or less than one year afterwards, Mr. Hundley wrote a letter in favor of free silver, and it was published in one of the State dailies. Two months later than that, I think it was in July, and after the national Republican convention had nominated McKinley on his magnificent platform of sound money, Mr. Hundley declared that he was with the Republican party on sound money principles. That was in July or August. In September Mr. Hundley was a candidate for Congress at the hands of the Republicans of that district.

Gentlemen, I have lived in Alabama for thirty-seven years. I have been a member of almost all the Republican conventions. The district in which I live has but one single county having a majority of colored voters, and that is Mr. Hundley's county, and, by the way, Mr. Richardson's county, and it may be safely relied on always to come up with several thousand Democratic majority. It is a curious fact, but nevertheless true.

Senator DILLINGHAM. Let me understand what your charge is against Judge Hundley with respect to the constitutional amendment. What is the charge you make against him which unfits him to be a judge?

Mr. CASHIM. The charge is that Mr. Hundley is not sound on the fourteenth amendment to the Constitution.

Senator DILLINGHAM. You charge him with being the originator of that proposition?

Mr. CASHIM. Yes, sir.

Senator DILLINGHAM. To discriminate between the races?

Mr. CASHIM. I charge him with being the originator and the champion of that measure.

Senator DILLINGHAM. Have you examined the resolution which he offered in 1888?

Mr. CASHIM. He offered no resolution in 1888, with all due respect.

Senator DILLINGHAM. He did not?

Mr. CASHIM. According to my recollection.

Representative RICHARDSON. Who offered that?

Senator DILLINGHAM. I find in this pamphlet a copy of a proposed amendment to section 2 of article 11 of the constitution of the State of Alabama, which was offered by Oscar R. Hundley, November 17, 1888.

Mr. CASHIM. Will you give me the record?

Senator DILLINGHAM. I find nothing in that resolution of the character to which the witness has referred, but it is stated that Mr. Pettus, the son of the Senator, offered the amendment to that; and then, what has been said subsequently may be true. But the original amendment did not contain any such proposition.

Senator BACON. He introduced it several times.

Senator DILLINGHAM. I wanted to know whether the witness was complaining because Judge Hundley was the originator of the amendment which discriminated between the white and the colored people.

Mr. CASHIM. That is the reason, sir. If it is true that Mr. Hundley introduced the resolution which he claimed he did introduce, then my objection on that score falls to the ground. I say Mr. Hundley did not introduce any such resolution at any time. I suppose you have at hand the records—the journal of the senate—and the journal of the senate shows that on that day that resolution referred to by him was introduced by Mr. Henderson.

Representative BURNETT. He was not a member of the senate in 1888.

Mr. CASHIM. Then that is an answer. The gentleman has given you an answer.

Senator DILLINGHAM. I know nothing about that.

Senator BACON. I think if we will let the witness go on——

Representative RICHARDSON. He will explain himself.

Mr. CASHIM. If Mr. Hundley was not a member of the senate in 1888, then Mr. Chairman, on the statement made in that paper he is not a fit person to be a judge.

Representative BURNETT. He may have been a member of the house. I was then a member of the senate, and he was not a member of the senate. That may have been introduced in the house, if introduced at all.

Mr. CASHIM. I do not want to trespass upon your patience, but I have been to some considerable expense and to some considerable humiliation, and my race all over the South is intensely interested in this matter.

Senator BACON. I hope you will resume right where you were interrupted. I want to hear your statement in a connected way.

Mr. CASHIM. As I said my charge against Mr. Hundley is that he is not sound on the constitutional amendments.

This is not the first time that charge has been made against an appointee. Louis E. Parsons, one of the most brilliant men of the South, was appointed by President Grant United States judge, and I think he was succeeded by Judge Bruce, who was appointed in his place. Governor Parsons made a speech at Talladega, in which he said he did not think the amendments to the constitution had been ratified in accordance with the requirements of the National Constitution, and as secretary of the Republican caucus from Montgomery County, then a member of a legislature from Montgomery county—we protested to the President and Senator Edmunds, chairman of the Judiciary Committee. Senator Edmunds wrote

that if that charge could be substantiated he would not vote to confirm Governor Parsons. The President withdrew Mr. Parsons' name, for the reason that he was regarded as unsound on the proposition which he had advanced, and the result was he appointed Judge Bruce, a man of high character.

The judiciary of Alabama has been characterized by men of high character and high honor. If Mr. Hundley's statement in this respect is not true, it seems to me that is a good reason why he ought not to be confirmed.

His attitude in regard to those amendments has been of such a character that it has divided the Democratic party on the question with the result that we now have the constitution which gives us four months' schools. I can not vouch for it, but I am quite sure I filed here with the chairman of the committee the speech made by Mr. Reynolds in the House of Representatives in support of his compulsory school bill.

I will take up where I left off, as well as I can, from the time the chairman asked me the question.

The first convention Mr. Hundley ever attended——

Representative CLAYTON. Republican, you mean?

Mr. CASHIM. Republican, I mean; and at which he was a candidate for Congress, was characterized by corrupt methods. Mr. Hundley, however, was nominated. I objected to his nomination. He was nominated, however, and I afterwards, of course, as a loyal Republican, gave him my support. He promised the convention that if elected and counted out he would take the case to the House of Representatives on the contest. We placed in his hands—I did myself—the testimony from my county. I assisted him in procuring testimony from Madison County, and from other counties in the district. Mr. Hundley thought he had a good case and I thought he had a good case. So did others. Mr. Hundley either never prosecuted that contest or abandoned it. He married and went to Europe and the Republicans lost sight of him for a long time. Mr. Hundley appeared no more in Republican conventions——

Representative RICHARDSON. How much money did he get in that contest?

Mr. CASHIM. I do not know, but Mr. Hundley told me that Mr. Hanna had given him \$2,000, and Mr. Wells told me he had never paid him the money that had been advanced to aid him and for the expenses of the campaign. My recollection is that his words were "He is an ungrateful dog."

Senator BACON. Who is Mr. Wells?

Mr. CASHIM. He was his campaign manager at that time.

Permit me to say that Mr. Hundley in the pamphlet states that the colored citizens at Birmingham met and passed resolutions in favor of the Hundley amendment. It seems to me the statement of such a thing as that ought to carry with it its own refutation. It is unthinkable that the colored people of Alabama would vote to deprive themselves of the benefit of the school funds. It is about as true as the charge that a hundred thousand negroes in Alabama walked up to the polls and voted to disfranchise themselves. There is absolutely no truth in it. It is like the statement one sees every now and then that the colored men are very anxious to be disfranchised; that

the colored men are so anxious to give up their rights as citizens. It is only debauching the public mind preparatory to some questionable act.

Now, sir, in 1898 the Republicans of Alabama resolved to support the Fusion candidate for governor of Alabama. I think Mr. Deanes was the Populist candidate for governor, and if I am not mistaken Governor Johnston was the opposing candidate. W. H. Skaggs appeared at Huntsville to make a speech in the interest of Mr. Deanes. I was requested to call on Mr. Hundley and ask him to attend the meeting. Mr. Hundley declared that he would not attend the meeting; that the Republican party was now a free-silver party in Alabama; that he would not support free silver, and that he was out of politics.

Senator BACON. When was that?

Mr. CASHIM. In 1898.

It is certainly a fact, and it was very well known. I will ask Governor Johnston whether I am correct in giving the date of this canvass.

Senator JOHNSTON. That is correct.

Mr. CASHIM. I do not know that Governor Johnston was identified with any particular faction, but at Tuskegee I heard him say that as governor he would do all he could for the promotion of the education of the negroes of the State. It was well known that Mr. Hundley had ceased to be a Republican. He took no part whatever in politics until 1902. In 1902 the white Republicans of Alabama—I want to say this first. I did not agree with them, yet I know that some of those men among what were known as the Lilly Whites were as honorable and as honest as anybody. On the other hand, there were men who were totally unfit for the exercise of any of the rights of citizenship. But they insisted that if they could organize a white Republican party in Alabama they would wrest the State from the hands of the Democracy, and could restore popular government to the people of Alabama. I did not believe it. I believed that Ephraim is joined to his idols. But I thought that there were men in the Republican party who ought to be given an opportunity to test it. Besides, the new constitution had disfranchised us. We had in the northern district not more than twenty-five colored men registered, whereas there were at least 2,000 colored men in the district qualified to register. I did not want to disclose our weakness. We called a meeting of the Republicans of that district, and we voted unanimously to refrain from participation in the Republican primaries. It was a voluntary act on our part, just as voluntary as in 1904 when a hundred thousand of us refrained from registering, so as to give the white people a chance to vote out the Democratic party. In 1894 the Democrats attacked the registration boxes. They registered the negroes anyhow, although they never appeared at the polls, and when the votes came out the Democrats had their accustomed majority. In 1902 we stayed away from the Republican primaries.

Senator DILLINGHAM. Senator Bacon, what has all this to do with the pending question? I do not want to object if it has any bearing on the question.

Senator BACON. I do not know why you ask me particularly.

Mr. CASHIM. I think I can explain to you what it has to do with it. In 1902 we were utterly helpless. The Republican State convention had met and resolved to exclude from its councils the 12 colored men elected to that convention from those counties where they did participate. We had nothing to fight with. Mr. Hundley was out of politics. I did not regard Mr. Hundley as being such a man as that it would be improper to make an improper proposition to. I sought Mr. Hundley. It was a cold-blooded proposition. It was the act, however, of a man who was not considering whether the weapon he used was a righteous weapon, but whether it was an effective weapon. I said, "If you will take the side of the colored people in this controversy between the Lily Whites and the Republicans in this State I think I can pledge you, sir, the support of Mr. Washington for United States district attorney in place of Mr. Vaughn, who has been removed." He said he would do it. He suggested that I indicate what he ought to say to the public. I gave him a sketch of what I thought ought to appear in the daily papers—that did appear in the Age-Herald of Birmingham. Mr. Hundley wrote this telegram. This is his writing:

September 12—

Representative BURNETT. What year?

Mr. CASHIM. 1902.

Hon. BOOKER T. WASHINGTON, *Tuskegee, Ala.*:

Should you be consulted in the matter of successor to William Vaughn, I beg to ask your indorsement of Hon. Oscar R. Hundley, a man who would administer justice to all the people, both white and black.

This is Mr. Hundley's writing, but I have signed it in my own writing.

Mr. Washington telegraphed me this:

TUSKEGEE, ALA., September 12.

Have not been consulted and may not be. Please advise me confidentially whether the man mentioned is in favor of shutting out from Birmingham meeting the few decent colored people who have been elected as delegates.

Mr. Hundley wrote to Doctor Washington. I wrote to Doctor Washington. He told me he would assist me all he could in securing the appointment of Mr. Hundley. He told me the President would appoint Mr. Hundley. The night before the appointment of Judge Roulach was made Mr. Washington's private secretary told me Mr. Hundley would be appointed the following day. The next day Judge Roulach was appointed. A few days later I called Doctor Washington up and he told me that the President was going to appoint Mr. Hundley, but that charges had been filed against him as being the author of the Hundley amendment, and that the President said he would not appoint such a person. Doctor Washington said that he knew nothing whatever about Mr. Hundley, but that he accepted my statement in regard to him and supported him because of my request, and that when the President asked him if Judge Roulach was an honest man he told him that he was, and the President said he would appoint Judge Roulach.

I then went to Mr. Hundley, and Mr. Hundley told me he was not the author of that objectionable feature; that he had introduced the resolution as I have stated, to which they tacked this objectionable feature. I believed that to be true, and I sent to

Doctor Washington his explanation, and I urged him to restore Hundley to the President's favor.

Now, Mr. Hundley has, in a way, simply transferred the scheme of excluding colored delegates from the State convention to the Republican primaries. Mr. Hundley's statements were not true. I know that Mr. Hundley is the author of the four resolutions that I stated, and that he championed one that was introduced by a Democrat by the name of W. A. Handley, of Randolph County, I think.

Now, sir, I think I have given my objections to Mr. Hundley, so far as his attitude in regard to that subject is concerned. Now, gentlemen, we have a terrible life to lead. We are deserted by our friends—

Representative BURNETT. Let me ask you a question right here. You say he promised to support the colored delegates to the convention at Birmingham?

Mr. CASHIM. Yes, sir.

Representative BURNETT. Did he do it?

Mr. CASHIM. He published the letter. I think he carried out his particular part of the contract. He published the letter. They were already excluded. In the meantime Mr. Thompson came upon the scene, and he and Mr. Hundley were working together. But I saw practically no difference between Mr. Thompson and Mr. Hundley and the Lily Whites, as they were known in that State.

Representative RICHARDSON. There are two factions of the Republican party in Alabama, are there not?

Mr. CASHIM. Yes, sir.

Representative RICHARDSON. To which one do you belong?

Mr. CASHIM. Both of them have voted for me unanimously for the last twenty years. It may be rather a paradoxical statement, yet at the same time it is a lesson I learned. Instead of fighting the common enemy they are continually fighting one another, and while they are fighting each other I have been able to secure the support of either one or both, in order to protect one from the other.

Representative RICHARDSON. Have you been an applicant for any State or Federal office since you closed your service?

Mr. CASHIM. No, sir. I will say that I am paying, out of the money I make practicing law, debts actually contracted while in the Government service.

Representative RICHARDSON. You have no political grievance?

Mr. CASHIM. I have no political grievance, whatever. I have never been refused any support. I have never asked any since I went out of the land office. I have an aspiration, but it is away out in the future. My aspiration with respect to the future is to be appointed a United States judge in some Spanish-speaking colony. I claim to be familiar—

Representative RICHARDSON. What offices have you enjoyed from the Republican party?

Mr. CASHIM. I do not like to speak of myself. I have already taken up a great deal of time.

Senator BACON. Those are facts we want to know.

Mr. CASHIM. I was first a deputy tax assessor in Montgomery. I was then deputy tax collector. I was then clerk of the house of representatives. I was then a member of the house of representa-

tives from Montgomery County for four years, and nominated the third time. I was nominated for tax assessor for Montgomery County, and I may say that I defeated Mr. Charles H. Scott's father for the nomination. I was a delegate to the Republican convention of 1876, and came under the influence of Mr. Ingersoll's speech in favor of Mr. Blaine. I supported Mr. Blaine in that convention and stood by him until he went down at Minneapolis. Then I transferred my allegiance to Mr. McKinley. I have been a delegate from the State at large. I have presided over Republican conventions; I do not know how many. I have been a registry clerk in the Montgomery post-office. I have been a railway postal clerk, and held that position for about twelve years. I have held the land office. I think that ought to be enough for one man.

Representative RICHARDSON. Do you know how many times during the two periods that Mr. Hundley claimed that he belonged to the Republican party he has been a candidate for some office or another in the Republican party or by appointment?

Mr. CASHIM. With the exception of the convention of 1904, Mr. Hundley has never been in any Republican convention as a member. He was a candidate before the convention of 1902, but at the convention of 1904 he was a candidate for delegate from the State at large.

Representative RICHARDSON. Was he not an applicant for the office of United States district attorney against Vaughn?

Mr. CASHIM. I suppose that was implied—

Representative RICHARDSON. Was he not an applicant when Judge Gooch died? Was he not an applicant for the judgeship?

Mr. CASHIM. I think so. I do not know about that. I can not say. On the contrary, I doubt whether he was, because I do not think he was a Republican then.

Representative RICHARDSON. Was he not an applicant for the United States district attorneyship when Roulach was appointed?

Mr. CASHIM. Yes, sir.

Representative RICHARDSON. Then he was an applicant for United States district attorney when Roulach's time expired, recently?

Mr. CASHIM. Yes, sir.

Representative RICHARDSON. Then he was an applicant for the Federal judgeship which he now holds?

Mr. CASHIM. Yes, sir; that is right.

Mr. Chairman, in the convention of 1904 the members of the State committee from the Eighth Congressional district were elected in the morning at half past 7 o'clock at the Florence Hotel, where colored people are not allowed to come. I raised the objection on the floor of the convention, and Mr. Hundley championed the other side.

Senator BACON. I will ask you if there is any further statement you wish to make in that connection.

Mr. CASHIM. I see nothing further.

Senator BACON. Of what State are you a native?

Mr. CASHIM. I am a native of Georgia.

Senator BACON. What part of Georgia?

Mr. CASHIM. Augusta, Ga.

Senator BACON. You have lived in Alabama, you say, thirty-seven years?

Mr. CASHIM. Thirty-six or thirty-seven years.

Senator BACON. You say you filed a letter with the President in response to his invitation?

Mr. CASHIM. I did, sir.

Senator BACON. I have no idea whether or not this is the document [handing Mr. Cashim a newspaper clipping]. I never saw you before to-day in my life, and I never heard from you. I want to know if that is a copy of it? That was sent to me, and the publication does not disclose the name of the author.

Mr. CASHIM. I did not file this with the President.

Senator BACON. Is that the letter written by you to the Attorney-General?

Mr. CASHIM. This is substantially the letter I filed with the Attorney-General. Of course I am unable to say whether it is full and complete and correct unless I compare it, but it seems to me and I think it is a copy of the letter I filed with the Attorney-General.

Senator BACON. I will tell you what I will get you to do. After you leave the stand I will get you to read this over, and then we may recall you.

Mr. CASHIM. Do you want me to read this thing to the committee?

Senator DILLINGHAM. Not now.

Senator BACON. It would take too much time now. I will ask you to read it after you have left the stand, and then we will recall you and ask you if you have read it and if the facts stated are correct.

Mr. CASHIM. I wrote a letter to the President reciting substantially the facts, but epitomizing them. The President's secretary told me to take it up to the Attorney-General, and that paper seems to be a copy of the one I filed with the Attorney-General.

Representative RICHARDSON. That paper is on file here.

Mr. CASHIM. I think so. I sent a copy addressed to the Judiciary Committee rather recently.

Senator BACON. The reason why I asked you especially about that is this clipping contains a recitation of the various resolutions introduced, and the dates and the names of the parties who introduced them, the amendments and the disposition made of each, and appears to be an official extract from the journals of the several houses of the Alabama legislature.

Mr. CASHIM. I know I did file that information. I do not know where the Advertiser got it. They did not get it from me. I take it that—

Senator BACON. I will say that this was sent to me with other documents. It is an excerpt from a newspaper, but the excerpt itself does not disclose the author of that particular letter which purports to be a letter written by a Republican to the Attorney-General.

Senator DILLINGHAM. There does not seem to be any objection to your suggestion that he examine it.

Senator BACON. I will ask whether there is among these papers a copy of the last resolution introduced by Judge Hundley when he was a member of the Alabama legislature on this subject? I have a copy of it here. That is the reason why I ask. I want to submit it to the witness.

Senator DILLINGHAM. There are certified copies of several, but I do not know whether it covers the last one.

Senator BACON. I will call the witness's attention to what purports to be a copy and ask him if it a correct copy.

Senator DILLINGHAM. I think it is here.

Mr. CASHIM. I am not sure that I filed certified copies here, but I did with the Attorney-General.

Senator BACON. We will wait and see. I will not ask you the question now.

Senator DILLINGHAM. I find here a certified copy of the resolution that was submitted at the session of 1890 and 1891; also one submitted at the session of 1892 and 1893.

Senator BACON. I find attached to this pamphlet what seems to be a letter from Judge Hundley to the committee, addressed to its chairman, Clarence D. Clark. I find attached—I suppose as an exhibit—a copy of what purports to be a resolution introduced by Oscar R. Hundley, of Madison County, in which the language used is—

Provided, That the money collected from persons of the white race shall be applied exclusively to the education of children of the white race.

Senator DILLINGHAM. What year was that?

Senator BACON. That was 1890.

Representative RICHARDSON. 1890 and 1891.

Senator DILLINGHAM. If you will look on the first page of Judge Hundley's document, you will find that he gives a copy of the joint resolution purporting to have been introduced by him in 1888, which does not contain that clause, and in his statement he says that when it came up Mr. Pettus offered that amendment, and it became a part of it, and then everybody substantially acquiesced in it.

Senator BACON. That is as to the resolution of 1888?

Senator DILLINGHAM. Yes.

Senator BACON. But now the resolution subsequently introduced by him in 1890, which had not anything to do with Mr. Pettus, uses the word "shall." I simply wanted to identify it.

Senator DILLINGHAM. Mr. Richardson, have you any further witnesses?

Representative RICHARDSON. That is all I believe. We have no other witnesses.

STATEMENT OF AUGUSTUS BENNERS—Resumed.

Representative BURNETT. I should like to have Mr. Benners recalled for a few questions.

Senator DILLINGHAM. Certainly.

(Mr. Augustus Benners appeared before the subcommittee.)

Representative BURNETT. Mr. Benners, I believe you stated that you had been practicing law a good many years. I think you stated how long you have been practicing in Birmingham. I ask you to state whether Mr. Hundley has the reputation of being a lawyer of any ability in that section of the State?

Mr. BENNERS. I do not want you to misunderstand me about that. I never met Judge Hundley until he was appointed judge. He did not live in the same town that I do. I can not say that I knew his reputation as a lawyer. I never came in contact with him in practice.

Representative BURNETT. Had you ever heard of his being a lawyer of any ability?

Mr. BENNERS. I can not say that I ever heard his legal ability discussed prior to his appointment.

Representative BURNETT. I will ask you about the signatures of quite a number of lawyers there, petitioning for his confirmation. Just state to the Senators about that.

Mr. BENNERS. Judge Hundley got a very meager indorsement from the bar of Alabama prior to his appointment. As I understand, his appointment was originally of a tentative nature, at least before it was announced in the press. Prior to that time very few lawyers had indorsed him.

After his appointment and after he actually went on the bench and was engaged in the trial of cases petitions were circulated asking his indorsement. One was presented to me, which I signed. It was presented to me by Captain O'Brien, his father-in-law, who is here present as a witness. I do not want to plead the baby act. At the time I signed that petition I had no reason to suppose, if I have any reason now, which I think I have, that Judge Hundley was not a suitable person to be district judge of a United States court. I had tried one or two law cases before him, and it struck me that he was of average ability. I had not gone into the Southern Steel Company case where I have had an opportunity to intimately observe his judicial manner, in so far as a lawyer may judge of a judge's judicial ability. I have heard lawyers discuss it as a matter of course. The petition was presented to other lawyers under the same circumstances as it was presented to me.

I want to say to the committee, if that statement is of any value as shedding any light on this case, that I have recently discussed with the leaders of the Birmingham bar, nine-tenths, I should say, perhaps not so large a fraction, of the practice in his district being at Birmingham—I discussed at some length with the leaders of the Birmingham bar his fitness to be a judge, and I believe it to be the unanimous opinion of the responsible lawyers at that bar that he should not be a judge. Were the slightest intimation given that his nomination would not be confirmed, I believe they would be open in their protest against his confirmation.

Representative BURNETT. Did his father-in-law carry around the petition?

Mr. BENNERS. He brought it to me, sir.

Representative RICHARDSON. Is it not a fact that the information was very earnestly circulated publicly there after the death of Senators Morgan and Pettus, who opposed him, that his confirmation would take place, and that that influenced a great many people to sign the petition?

Mr. BENNERS. Yes, sir. As I stated this morning, I have never seen any statement there that he would not be confirmed. I have seen the statement reiterated over and over again, I suppose not less than a dozen times, that his appointment would certainly be confirmed.

Senator BACON. You say that you did not know of Judge Hundley's reputation as a lawyer prior to his appointment to the bench?

Mr. BENNERS. No, sir; I did not.

Senator BACON. How far is your place of business from his, or from the place where he lived?

Mr. BENNERS. Huntsville.

Senator BACON. He lived in Huntsville?

Mr. BENNERS. Yes, sir.

Senator BACON. How far is that from Birmingham? I believe you live in Birmingham.

Mr. BENNERS. About a hundred miles, roughly speaking.

Senator BACON. How long have you been practicing law in that section?

Mr. BENNERS. Fifteen years.

Senator BACON. Are you or are you not generally acquainted with the reputation of prominent lawyers in northern Alabama?

Mr. BENNERS. Yes, sir. I have come in contact with most of the lawyers in Alabama, Senator, in practice. I have been actively in practice for a number of years.

Senator BACON. You think you are acquainted with the reputations of those lawyers?

Mr. BENNERS. Yes, sir; I know the lawyers of Alabama, notably those in the northern end of Alabama.

Senator BACON. And prior to that time you had not the opportunity to judge of Mr. Hundley's capacity as a lawyer?

Mr. BENNERS. No, sir; I never came in contact with him before his appointment.

Senator BACON. And you did not know what reputation he had?

Mr. BENNERS. No, sir; I did not know his reputation.

Senator CLARKE, of Arkansas. Is Chief Justice Tyson among the number of lawyers you know in Alabama?

Mr. BENNERS. Yes, sir.

Senator CLARKE, of Arkansas. Do you know enough about him to know whether he could tell a careful, painstaking, able lawyer?

Mr. BENNERS. I have a very high regard for Chief Justice Tyson as a lawyer and a judge.

Senator CLARKE, of Arkansas. Do you think he is a man who would speak the truth as to a proposition of that kind, if he had occasion to talk about it at all?

Mr. BENNERS. I should not question Judge Tyson's veracity about anything.

Senator CLARKE, of Arkansas. And his competency to pass an opinion upon a lawyer's qualifications to make a judge?

Mr. BENNERS. I do not think the fact that Judge Tyson is a supreme court judge puts him in any better position to pass upon that question than a lawyer practicing, and certainly not in as good a position as a lawyer practicing before Judge Hundley, because I have no idea Judge Tyson has ever come in contact with Judge Hundley as a judge, and only to a very limited extent as a lawyer.

Senator CLARKE, of Arkansas. If he has made a statement that he has practiced in that court in important litigation, he would probably not be mistaken about it?

Mr. BENNERS. No, sir. I would believe any statement he made on any subject.

Senator CLARKE, of Arkansas. You indicated that the probability of the confirmation of Judge Hundley had influenced many persons to give him an indorsement. Would you state that that influenced Judge Tyson?

Mr. BENNERS. Indorsements and complimentary remarks in Alabama are not made differently from what they are in any other place in the Union, and a man may have a variety of motives for making

complimentary expressions with reference to other people. I think any man in public life is familiar with the circumstances under which complimentary things are sometimes said.

Senator CLARKE, of Arkansas. I think you said you signed a petition addressed to the Senate advocating, or at least consenting to, the confirmation of Judge Hundley?

Mr. BENNERS. I think about six or eight months ago I did.

Senator CLARKE, of Arkansas. Was any pressure brought to bear upon you to do that?

Mr. BENNERS. Judge Hundley was holding court, and we had a number of cases in that court. We have a large docket in that court. I do not say that I was trying a case that day. I knew I would be within a few days, or a very short time thereafter. As I say, I do not want to plead the baby act about it. I had no reason to suppose that he would not, and I certainly hoped that Judge Hundley would make a good judge.

Senator CLARKE, of Arkansas. That represented your opinion about him at that time?

Mr. BENNERS. In so far as I had an opinion. I had had very little experience before him.

Senator CLARKE, of Arkansas. The fact that you have to practice before him hereafter does not seem to have deterred you from expressing your opinion on this occasion?

Mr. BENNERS. No, sir. I got to that point of desperation that I determined as between practicing law before him and going out of that court, I preferred to go out.

Senator CLARKE, of Arkansas. Upon what do you base that disturbed condition of your mind—what transpired in connection with that particular case?

Mr. BENNERS. What transpired in connection with the Southern Steel case?

Senator CLARKE, of Arkansas. You have detailed in your testimony in chief all about that case?

Mr. BENNERS. No, sir; it would be impossible to detail all the circumstances I am familiar with at any length in connection with that case, without wearying the committee.

Senator CLARKE, of Arkansas. What you have omitted was omitted on your own judgment?

Mr. BENNERS. I would not like to commit myself to that statement. It is a very long matter. It has occupied me daily for nearly three months. There have been infinite details in connection with it. What I tried to do this morning was to give a résumé of what struck me as the salient points in the case. I doubtless omitted to refer to matters which, on reflection, I will recall; and I should like to refer to one now. Since I left here I find that I failed to hand the committee this morning a copy of a decree which he rendered in this case.

Senator CLARKE, of Arkansas. Be good enough to hand it in now. (The decree is as follows:)

No. 7977 and No. 239—In the district court of the United States for the southern and eastern divisions of the northern district of Alabama—In the matter of Southern Steel Company, bankrupt, in bankruptcy:

In these bankruptcy proceedings the report of receivers coming on to be heard and considered by the court, come the three receivers, and after a full

investigation of the subject-matter of the said report it is considered, ordered, and adjudged by the court:

1. That T. G. Bush is hereby appointed a coreceiver of the property and estate of the Southern Steel Company with the three receivers heretofore appointed by the court, and shall with them exercise the powers heretofore or by this order conferred on the receivers in this matter. He shall qualify by giving bond payable to the United States of America in the sum of \$100,000, conditioned as required by law, to be approved by the clerk of this court. In case there are more sureties than one, such sureties may severally qualify for a specific amount, but the aggregate of such specific amounts shall not be less than \$100,000.

2. It being shown to the satisfaction of the court that it is necessary in the best interests of, and for the preservation of the estate of said bankrupt, that its business continue to be conducted, it is considered and ordered by the court that the plants, properties, and business of the said bankrupt Southern Steel Company, or such parts thereof as, in the opinion of the receivers of this court, may be advantageously operated, be operated and conducted by the said receivers for the period of six months and thereafter until the further orders of the judge of this court, and that should any disagreement or difference of opinion arise among the receivers the decision of a majority in number of the receivers shall control the actions of the receivership until the action be otherwise ordered by this court.

3. That the receivers of this court are authorized, empowered, and directed to take possession of, collect, manage, and control all of the properties, plants, assets, and effects of every kind and description of the said Southern Steel Company in this and in other States, and the same to hold subject to the orders of this court; and they are authorized and empowered from time to time to employ such agents and employees as, in their judgment, are suitable and proper for the operation, conduct, or conservation of the properties, business, and assets of said bankrupt, and from time to time to pay the necessary expenses incurred in the management and conduct or conservation of the bankrupt estate, and they are authorized, empowered, and directed to take such steps and institute and prosecute such proceedings, actions, and suits as may be necessary or proper to reduce to possession any of the properties and assets of said bankrupt, and to collect and realize upon any claims, debts, or demands due or collectible for the benefit of said bankrupt estate, and in doing so to invoke the aid and assistance of other courts.

4. That said receivers are hereby ordered to pay wages due to workmen, clerks, and servants of the said bankrupt which have been earned by them within three months before the date of said bankruptcy proceedings, not to exceed the amount limited by law.

5. Said receivers may make contracts for the transportation of freights, and to that end in that connection may pledge their receiver's certificates to secure the payment of the freight charges.

6. Except as herein modified, the former orders and decrees of this court in these bankruptcy proceedings are ordered by the court to continue of full force and effect.

Done at Huntsville, Ala., at chambers, on this the 1st day of November, 1907.

OSCAR R. HUNDLEY, *District Judge*.

Indorsed: Filed November 1, 1907.

CHAS. J. ALLISON, *Clerk*.

A true copy:

CHAS. J. ALLISON, *Clerk*.

Mr. BENNERS. I stated that I believed it was Judge Hundley's purpose to hold this property in the grip of these receivers, and the certified copy of the decree which I have just given the committee was rendered in that case, in which he directed that the property be operated by these temporary receivers for the period of six months. I call the committee's attention to the fact that the bankruptcy act contemplates that temporary receivers in bankruptcy, or receivers as they are called under the act, are to hold the property simply pending the time that the creditors can be called together and elect a trustee. The receivers can not sell the property. They are not

charged with any of the serious functions, or with any function, I may say, of administering the estate at all. All they can do is to take care of it. They are mere caretakers under the provision of the act.

Senator CLARKE, of Arkansas. You are complaining of the fact that they did not operate the plant better than the owners could?

Mr. BENNERS. Let me say a word before I answer the question?

Senator CLARKE, of Arkansas. Yes, sir.

Mr. BENNERS. In that decree the judge says this property shall be operated for a period of six months. I know that that was inserted in there, as stated to me, by one of the receivers for the purpose of making it impossible to remove them within that time. I am aware of the fact that the court could revoke that order, but it was inserted in there, as I understand and as was stated to me, for the moral effect it would have.

Immediately after the decree was rendered that sentence was quoted in a draft of the receivers' certificate which was handed to me for approval. I objected to its approval on the ground that if that went into the face of the receivers' certificate and a party should buy the certificate he would have grounds at least for representing to the court that the temporary receivership should not be terminated for the period of six months. Consequently I protested against the printing of that portion of the decree in the receivers' certificates, and it was ultimately omitted, although it was printed in the first draft.

Senator CLARKE, of Arkansas. You stated that nine-tenths of the lawyers, or nine-tenths of the leading lawyers, of the Birmingham bar have changed their opinion upon the question of the propriety of confirming Judge Hundley.

Mr. BENNERS. I have discussed the matter within ten days with half a dozen men whom I regard as the leading lawyers of the Birmingham bar, and they are unanimously of the opinion that Judge Hundley is not a suitable person to be a Federal judge.

Senator CLARKE, of Arkansas. Have they manifested that change of sentiment in any communication sent to this committee, so far as you know?

Mr. BENNERS. Not to this committee; no, sir.

Senator CLARKE, of Arkansas. Then, if they are on record as advising his confirmation, they have not changed the evidence of their attitude if they have changed their attitude.

Mr. BENNERS. Not so far as I know. Of course, I am not familiar with your records. I can not state about that.

Senator CLARKE, of Arkansas. That is all.

Representative BURNETT. Senator Clarke asked you about Judge Tyson. Judge Tyson lives at Montgomery?

Mr. BENNERS. Yes, sir.

Representative BURNETT. Which is something like a hundred miles farther off than you are from Judge Hundley.

Mr. BENNERS. Yes, sir.

Representative BURNETT. I will ask you if Judge Simpson and Judge McClelland do not live in his district?

Mr. BENNERS. Judge McClelland lives at Athens, which is 30 miles from Huntsville. Judge Simpson lives at Florence, which is a short distance farther—just how far I do not know.

STATEMENT OF MILTON HUMES.

Mr. MILTON HUMES appeared before the subcommittee.

Senator CLARKE, of Arkansas. What is your business?

Mr. HUMES. I am a lawyer.

Senator CLARKE, of Arkansas. How long have you practiced law?

Mr. HUMES. Since 1868.

Senator CLARKE, of Arkansas. In what State?

Mr. HUMES. At Huntsville, Ala.

Senator CLARKE, of Arkansas. Has that been the seat of your operations?

Mr. HUMES. I live there and practice law there, and of course I have practiced law in different parts of the State.

Senator CLARKE, of Arkansas. That has been your place of residence during your connection with the bar?

Mr. HUMES. Yes, sir.

Senator CLARKE, of Arkansas. Do you know Judge Hundley, whose nomination is now pending?

Mr. HUMES. Yes, sir. I have known Judge Hundley all his life.

Senator CLARKE, of Arkansas. Have you been identified with official life in Alabama in any way?

Mr. HUMES. I have never held any office of importance. I was at one time president of the Alabama Bar Association.

Senator CLARKE, of Arkansas. How long since?

Mr. HUMES. That is some years ago. I do not remember the exact date, Senator.

Senator CLARKE, of Arkansas. You say you have been acquainted with Judge Hundley all his life?

Mr. HUMES. Yes, sir; we have lived in the same town.

Senator CLARKE, of Arkansas. I should like to have your estimate of him as a man and a lawyer, especially with reference to his qualifications for United States district judge.

Mr. HUMES. Judge Hundley has been a member of the Huntsville bar for about thirty years. During a portion of that time his office adjoined mine; it was next door to my office. I got to know him very intimately and very well, not only as a citizen and as a man; but also professionally. I have had an opportunity as a lawyer to observe his capacity in the trial of law cases in the law courts and in the trial of equity cases in the chancery courts, and also the trial of law and equity cases in the Federal courts.

Senator CLARKE, of Arkansas. Is there a session of the Federal court held at Huntsville?

Mr. HUMES. Yes; at Huntsville, in April and October of each year.

Now, my estimate of Judge Hundley's ability as a lawyer is that he is qualified to fill the position of judge for the United States court, and not only have I had an opportunity of determining what my opinion is in that regard during his career as a lawyer at the bar, but I have also tried some cases before him since he has been on the bench.

The first case that I had before him involved some questions arising under the present bankruptcy law, and the lawyer who was opposed to me was one of his opponents for the position to which he

has been nominated. Judge Hundley decided that case against me. I thought he was mistaken and took the case to the court of appeals. The court of appeals reversed him.

I have tried some other cases since before Judge Hundley, several of them—and he has exhibited in a higher degree the qualities of a good judge than I thought he possessed before he went in the bench. He is exceedingly painstaking and he is exceptionally polite to the members of the bar. He is patient and he is a good listener. He exercises judicial discrimination and discernment in regard to all points of law that are made before him in the trial of a case, and I think he errs about as seldom as judges who occupy such positions ordinarily do.

Now, during his career as a lawyer I have been engaged in cases in which he was my associate counsel, and many cases in which he was opposed to me—cases in the law courts and cases in the equity courts, some cases of considerable importance, involving considerable amounts. I have had an opportunity in that way to observe his ability and qualifications and fitness for a position of this character.

I have also talked with the judges before whom Judge Hundley has practiced law. For instance, I remember that Judge Robert C. Brickle, who is dead now, who was formerly chief justice of the supreme court of Alabama, and whom I regarded as by long odds the finest lawyer I have ever had the pleasure of meeting—Judge Brickle while he was on the supreme court bench, in conversation with me in regard to Mr. Hundley's preparation of his cases in the supreme court, spoke in the highest terms commendatory of the ability that he displayed.

I heard other judges of the supreme court speak in the same way, and then the judge of our chancery court, in the chancery division of which Huntsville is a part, the present judge, William H. Simpson, of Decatur, Ala., with whom I have had conversations recently in regard to Mr. Hundley's ability as a lawyer, spoke of him in the highest terms. So the judges of the law courts there have spoken to me of Judge Hundley in the same way.

Senator CLARKE, of Arkansas. Are you related in any way to Judge Hundley?

Mr. HUMES. No, sir; I am not only not related, but I am under no obligations to Mr. Hundley of any kind, either past or present, except that of friendship.

Senator CLARKE, of Arkansas. Are you a party associate of his?

Mr. HUMES. Sir?

Senator CLARKE, of Arkansas. Are you an associate of his in a political party?

Mr. HUMES. No, sir; I am not.

Senator CLARKE, of Arkansas. I believe that is all.

Senator DILLINGHAM. Does any other gentleman desire to interrogate Mr. Humes?

Representative RICHARDSON. You say that Judge Hundley has enjoyed a lucrative practice at the bar in Huntsville.

Mr. HUMES. No; I do not think I used that word or term.

Representative RICHARDSON. He ranks there, according to your opinion, among the first in the amount of practice he has?

Mr. HUMES. I do not think I said that.

Representative RICHARDSON. Is that true?

Mr. HUMES. Perhaps there are other lawyers who have had a larger general practice than he, but he has had the conduct during my acquaintance with him of very important cases in the law courts and in the equity courts. He was for some years local counsel for one of the railroad systems running through that part of the State, and then subsequently, and for some fifteen or twenty years since that, he has been the division counsel of that system—the Nashville, Chattanooga and St. Louis Railroad Company—until he was appointed to this position on the bench. I know that he has attended to those cases outside of his railroad business in a way that should be satisfactory to his clients, and I know from what the railroad management has said to me in regard to his conduct of the law business of the railroad that it has been entirely satisfactory and acceptable to the railroad company.

Representative RICHARDSON. His first wife was a niece of the president of the Nashville, Chattanooga and St. Louis Railroad, was she not?

Mr. HUMES. I think she was.

Representative BURNETT. That is the road he represented?

Mr. HUMES. Yes, sir.

Representative RICHARDSON. Did he not represent that portion of the Nashville, Chattanooga and St. Louis Railway from Decherd to Hobbs Island?

Mr. HUMES. Yes. The Nashville, Chattanooga and St. Louis Railroad Company, before the extension of its branch from Decherd to Huntsville, part of its line ran through Jackson County, Ala., and Mr. Hundley was the attorney in that county, and then subsequently when the road was extended to Huntsville, and then from Huntsville farther south to Guntersville, and then from Guntersville farther south, he became the division counsel in Alabama.

Representative RICHARDSON. Judge Hundley, at the time of his appointment last April by the President of the United States, was in the enjoyment of about his usual practice at Huntsville?

Mr. HUMES. I do not think he gave so much attention to general practice as some other lawyers there do, but I suppose that he enjoyed about the same practice as he had previously.

Representative RICHARDSON. The clerk of the Madison County circuit court certifies that he had four cases on the docket at that time. That is of record here.

Senator BACON. Is that the county in which he lives?

Representative RICHARDSON. Yes, sir. [To Mr. Humes.] Do you know anything about what practice he had in the Federal court at the time of his appointment.

Mr. HUMES. No; I do not especially. I know he had some cases there for the Nashville, Chattanooga and St. Louis Railway.

Representative RICHARDSON. Then you will be very much surprised to know that he did not have a single case on the Federal docket at Huntsville at the time he was appointed.

Mr. HUMES. I do not know anything about that. I know he has had cases there in the Federal court, which I had occasion to observe something in regard to.

Representative RICHARDSON. If that is the fact, it does not indicate that he was in the enjoyment of a very large practice or that he was very much sought after as a lawyer.

Mr. HUMES. I do not know about that. I suppose his work as attorney for the railroad company took up a great deal of his time. Then I know that he was engaged in some litigation involving considerable interests in Madison County and in adjoining counties. He had charge of the litigation in those cases.

Representative RICHARDSON. Will you please tell the committee what litigation? Can you name it?

Mr. HUMES. Yes. I know that he was the receiver of litigation that was in the chancery court in Madison County in reference to the Huntsville Gaslight Company. I was associated with him as his counsel in that case. He was the receiver. The litigation was protracted for a number of years.

I can recall now a case involving the contest of a will in Limestone County. It was the will of a lady whose estate amounted to perhaps a hundred thousand dollars. We had a contest in the court of probate. Mr. Hundley was the leading counsel for the proponents, and I was representing one of the counsel for the contestants.

Representative RICHARDSON. His uncle was the proponent?

Mr. HUMES. His uncle was the proponent and the will was probated, and then after it was probated there was a bill filed in the court of equity in that county by Mr. Hundley for the distribution of the funds. There were some difficult features in the will in regard to the disposition of the property, and a bill had to be filed for the purpose of getting the direction of the court in reference to what was the true construction of the instrument.

Representative RICHARDSON. That was the will of Miss Mary Ann Walter.

Mr. HUMES. I think so.

Representative RICHARDSON. Who executed a will more than twenty years before her death?

Mr. HUMES. Yes.

Representative RICHARDSON. And the paper was thrown carelessly around somewhere. It made provision for Mr. Hundley's uncle and some other provisions, and the woman died without a will, except that which was found.

Mr. HUMES. Yes. The will was not thrown around carelessly. It had been folded up very carefully and put in the bottom of a trunk the old lady had, and that was one difficulty about the contest.

Representative RICHARDSON. Is it not a fact that after her death, her nephew, Tom Woodruff, went into possession of the property, believing she had made no will at all?

Mr. HUMES. Really, Judge, I do not remember the details with sufficient accuracy. My recollection is that Mr. Woodruff, who was my client, in rummaging through the trunk of hers, at her residence, discovered the will himself, and as soon as he discovered it he made it known. So really he did not have time to take possession of the property. That is my recollection.

Representative RICHARDSON. But you do not know anything about what practice Mr. Hundley was enjoying in the Federal court at the time of his appointment?

Mr. HUMES. No, sir.

Representative RICHARDSON. You can not mention any case or whether he had any case in the court at all.

Mr. HUMES. No, sir; I do not know. I did not keep up with that.

Representative RICHARDSON. Is it not a fact that Hundley's practice was rather confined to the railroad cases?

Mr. HUMES. Yes; I expect that that practice during his incumbency of the position as counsel of that company, took a greater portion of his time.

Representative RICHARDSON. Do you say that he ranks with the first lawyers of the Huntsville bar in capacity?

Mr. HUMES. My opinion about that is just this: Judge Hundley is just as well qualified to fill that place as any one who has made application for it; just as well qualified, and in some respects better, perhaps.

Senator BACON. I suggest that you answer the question—whether he ranks with the first lawyers of that bar?

Mr. HUMES. From what I know I should say he does.

Representative RICHARDSON. You say he is just as well qualified as any man who made application for this position—for appointment as Federal judge. You are aware that Judge Richard W. Walker made an application for this appointment. Do you consider Oscar Hundley as able a lawyer as Richard W. Walker?

Mr. HUMES. I consider him just as well qualified for that position—to fill the position of judge in the district court there—as Judge Walker.

Representative BURNETT. That is not an answer to the question. Repeat the question.

Representative RICHARDSON. Judge Walker was appointed by Governor Jones as one of the supreme court judges of Alabama?

Mr. HUMES. Yes, sir.

Representative RICHARDSON. And is it not a fact that during the pendency of his office, while he was administering that office, he made a very decided reputation throughout the States as a supreme court judge?

Mr. HUMES. He was considered a very good judge.

Representative RICHARDSON. Very good?

Mr. HUMES. Yes.

Representative RICHARDSON. His father before him was on the supreme court bench in Alabama?

Mr. HUMES. Yes, sir.

Representative RICHARDSON. And they are a notable family of lawyers—the Walkers?

Mr. HUMES. Yes, sir.

Representative RICHARDSON. And you say that Oscar Hundley ranks with that class of lawyers in Alabama?

Mr. HUMES. Yes; in my judgment, he does.

Representative RICHARDSON. That is all.

Senator CLARKE, of Arkansas. What is his character and standing as a man from a social and business standpoint?

Mr. HUMES. I knew his father and mother during their lifetime very well; I knew his uncle. They all stood well. No family of people stood higher in that section of the State than Mr. Hundley's family on both sides. Mr. Hundley stands well as a man and as a citizen.

Seator CLARKE, of Arkansas. Respected by all his neighbors?

Mr. HUMES. He is esteemed very highly. Of course, like everybody else, he has his enemies. We all have those.

Senator CLARKE, of Arkansas. The general estimate of the community is favorable?

Mr. HUMES. Yes, sir; it is favorable.

Representative RICHARDSON. You were in Washington, were you not, aiding him in securing the appointment?

Mr. HUMES. No, sir.

Representative RICHARDSON. Last winter?

Mr. HUMES. I was not. When he wanted to be made district attorney, at the time that Mr. Roulach was appointed, I came here and Mr. Knox, Senator Knox now, who is a member of this committee, was Attorney-General at the time. I paid a visit to Mr. Knox when he was Attorney-General and made a statement to him as to my opinion in regard to the qualifications of Mr. Hundley for that position—the position of district attorney. I do not remember that I was here last winter assisting him.

Representative RICHARDSON. Were you here with Mr. Welborn?

Mr. HUMES. Yes; but we were not here on that business at all.

Representative RICHARDSON. Were you not?

Mr. HUMES. Oh, no.

Representative RICHARDSON. At the time you made the statement of his qualifications to Mr. Knox, the Attorney-General at that time, he was not appointed?

Mr. HUMES. No. I think Judge Roulach was appointed.

Representative RICHARDSON. Practically, you made the same statements to Mr. Knox that you have made to the committee?

Mr. HUMES. I made practically the same statement in regard to his qualifications for the position of district attorney. I at that time thought that Mr. Hundley had qualities which would fit him peculiarly for some of the duties that would be incumbent upon the district attorney, and it was my idea that he would make a better district attorney than judge. But now all lawyers know that we are very frequently disappointed in regard to lawyers when they get on the bench. They do not make as good judges as we hoped or expected they would, and sometimes we are disappointed the other way. Now, really from my experience with Judge Hundley as a judge on the bench, he has disappointed me favorably. He has made a better judge than I thought he would. He has made a better judge because he is more painstaking than I thought he would be; he is more patient with the lawyers and he is a better listener and understands quickly; he catches on to a point quickly; and he has that discrimination which a trial judge should have, in order to be a good judge.

Representative CRAIG. How often has he changed his political affiliations?

Mr. HUMES. I have not had much to do with that. I think he has changed from Democrat to Republican.

Representative CRAIG. Did he ever change back to the Democrats and then to the Republicans?

Mr. HUMES. Not that I know of.

Representative CRAIG. He ran for office* in the Republican party almost immediately after he changed, did he not?

Mr. HUMES. I do not remember how soon it was after he changed his politics that he became a candidate for Congress against General Wheeler.

Senator DILLINGHAM. Was he a Republican or a Democrat all the time he was in the legislature from 1888 to 1902?

Mr. HUMES. I did not keep up with his political career.

Representative BURNETT. Was not that the time when he changed—when he was in the legislature?

Mr. HUMES. I think so; when he was in the legislature, though I am not sure.

Representative CRAIG. Was he not in the State senate when he went into the Republican party? And had he not been elected to the State senate at that time on the Democratic ticket?

Mr. HUMES. I do not remember about that.

Representative CRAIG. Was not there a petition signed by several people in Madison County asking him to resign his office on that account?

Mr. HUMES. I do not remember.

Representative RICHARDSON. Did you not attend the Democratic convention that was held in Madison County when that convention passed a resolution inviting Mr. Hundley to resign a Democratic commission that he held, and to which he was elected by the Democrats of Madison County, when he went to the legislature or the senate and became a Republican. He held that commission as a Democrat official while he was attending the Republican caucuses, and never did give it up. Did you not attend that convention which passed that resolution?

Mr. HUMES. I do not remember that I did.

Representative RICHARDSON. What is your best recollection?

Mr. HUMES. I have no recollection at all about it.

Representative BURNETT. Did not the people burn him in effigy?

Mr. HUMES. I have no recollection of anything of that sort.

Representative RICHARDSON. Do you think a man of good standing and good character would accept a commission from a political party and then violate it or go into the other party and refuse to resign? Do you think a man of good character and standing would do that?

Mr. HUMES. I do not think I ought to be called upon to express an opinion on an abstract matter of that sort.

Representative RICHARDSON. You expressed an opinion about his character and standing.

Mr. HUMES. In politics I have not had much to do, but I have observed that they do a good many things which perhaps they ought not to.

Representative RICHARDSON. You say you have not had much to do with politics?

Mr. HUMES. No, sir.

Representative RICHARDSON. How many times have you been a candidate for the State legislature?

Mr. HUMES. I have not been a candidate for the State legislature.

Representative RICHARDSON. Either branch of it?

Mr. HUMES. No, sir.

Representative RICHARDSON. Never at all?

Mr. HUMES. No, sir.

Representative RICHARDSON. Did you not announce your candidacy for the State legislature at one time?

Mr. HUMES. Yes, sir; at the instance of some friends of mine.

Representative RICHARDSON. Were you not defeated?

Mr. HUMES. Yes, sir.

Representative RICHARDSON. Did you not run for the legislature?

Mr. HUMES. Yes; I ran for the legislature, after being nominated.

Representative RICHARDSON. And you were elected?

Mr. HUMES. I was elected.

Representative RICHARDSON. But you were defeated twice for the senate?

Mr. HUMES. I was not a candidate in the sense of the term of being a candidate either time, as I understand it.

Representative RICHARDSON. Do you not recollect this to be a fact, that R. B. Rhett announced his candidacy for the State senate, and that you yourself came out and announced yours, and Rhett retired, and Rice defeated you in the convention? Rice did defeat you in the convention?

Mr. HUMES. Yes, sir. But I was not a candidate for the nomination.

Representative RICHARDSON. Had you not announced it in the papers?

Mr. HUMES. No, sir; I had not.

Representative RICHARDSON. You were not expecting to be voted on by yourself.

Mr. HUMES. It was a convention, as I understand; that is my recollection about it, and I was not a candidate for the nomination from the convention.

Representative RICHARDSON. The reason I asked you these questions is that you say you have not had anything to do with political affairs in Madison County.

Mr. HUMES. I said I had not had any large experience.

Representative BURNETT. In that important litigation in which you say Hundley was engaged, he was the receiver and not the counsel.

Mr. HUMES. He was the receiver appointed by the chancery court.

Representative BURNETT. He was not an attorney in the case?

Mr. HUMES. I was associated with him as attorney, representing the receivership.

Representative BURNETT. I know, but he was not an attorney—he was the receiver—and you were representing him, as I understand.

Mr. HUMES. Yes, sir; he was the receiver and I only became counsel in the case late in the litigation, so as to assist him.

At 5 o'clock and 15 minutes p. m., the subcommittee adjourned until to-morrow, Saturday, February 8, 1908, at 10 o'clock a. m.

WASHINGTON, D. C., *February 8, 1908.*

The subcommittee met at 10 o'clock a. m. in the room of the Committee on Immigration, United States Senate.

Present: Senators Dillingham (chairman) and Clarke, of Arkansas.

Also Senators Bankhead and Johnston; also Representatives *Burnett and Richardson*, of Alabama.

STATEMENT OF THOMAS G. BUSH.

Mr. Thomas G. Bush appeared before the subcommittee.

Senator DILLINGHAM. Where do you reside, Mr. Bush?

Mr. BUSH. Birmingham, Ala.

Senator DILLINGHAM. We shall be pleased to hear anything you may wish to submit to the subcommittee.

Mr. BUSH. Mr. Chairman, I wish to state first that I am not here as a champion of Judge Hundley. Were it not for the fact that this question has been injected into the receivership of the Southern Steel Company, or that the receivership has been injected into this question, I would not be here at all. I have high regard for Judge Hundley, and am quite willing to commend him in any way I can. But the reason I am here is this: The question, as I understand, involves the receivership, by reason of the fact that this charge against Judge Hundley, claiming that he is not suitable for the position of judge because of his action with respect to the receivership, makes it necessary that the receivers should defend their action or vindicate his.

If I understand the question as it appears to be considered, it is this: The charge is that Judge Hundley, by not appointing certain parties receivers and appointing certain other parties receivers, did great damage to the interest of the estate concerned, and for that reason he is not qualified to act as judge of that court, or is incapacitated. If it is proven that his action resulted in as good care of the estate and as good results as would have followed in case he had appointed the men who were originally suggested, it seems to me that part of the case falls to the ground.

Now, I should like to say in the outset, which I think is a matter of some importance, that from the time the present receivers were appointed up to the present day there has not been any form of protest whatever to the court in any manner or form as to the appointment of the receivers or as to their action and their conduct of the business of the estate.

I desire further to state on December 13, 1907, the receivers made a public report to the creditors, consisting of an audience of three or four hundred people, and after that filed this detailed report with the court. There is not one single statement in the report that has ever been challenged or about which there has been any complaint. So the case seems to have been tried largely down there in the newspapers of a little town, from which one of the parties who was here yesterday hailed, and seems to have been brought up here for further trial without ever having been called to the attention of the court in Alabama.

I desire to say that I am not a politician. I have nothing to do with politics—not, perhaps, as much as a good citizen ought to have. Therefore I regret that politics has been injected into this matter. I am a business man, and I propose only to make a plain business statement in regard to this matter.

I wish to refer to the parties who appeared before the subcommittee yesterday, as I understand. While the names of the persons making these charges are not known and are not given, I understand that there was an attempt to substantiate them by the persons who appeared before the subcommittee on the other side yesterday. As

I understand, among the gentlemen who appeared were two attorneys, Mr. Benners, from Birmingham, and Mr. Hood, from Gadsden, and also Mr. Adler, from Birmingham. I do not hesitate to say that these gentlemen are interested parties. These two attorneys are interested in this case, one way or the other—personally interested. I do not think either one of them represents the creditors, the stockholders, or the bondholders, or any of the interests concerned in this matter, I will prove that by a later statement.

I wish to say this without any desire to be personal, because personally I like Mr. Benners and have nothing against the other gentlemen. But when the receivers were appointed, I having been appointed one week after the first three receivers, I found that there were three attorneys serving these receivers. Mr. Benners was one of those attorneys. I objected somewhat to the number of attorneys, knowing the difficulty in regulating fees sometimes when so many are concerned. But I did not want to offend or discredit either. So I said: "Now all these attorneys will be considered as one, in substance, and will serve the receivers." I later came to realize that Mr. Benners was not only the attorney for the receivers, but he was attorney for the petitioning creditors who desired originally the Messrs. Adler to be appointed receivers. He since that time, and before the receivers were discharged, has become, as I am informed, an attorney for the trustees, and during the period of the receivership, without the knowledge of the receivers, or the other attorneys he undertook, in connection with the attorney representing the bankrupt, to have the receivers displaced by a very prompt adjudication of the bankruptcy before they could ever make their report. So I expressed myself very freely, appreciating the fact that this gentleman occupied about four positions as attorney, and I ceased personally, so far as I was concerned, to consult him in regard to affairs so far as the receivership needed legal services.

As to the appointment of the receivers, I beg to say it is well known that when the application was made for the appointment of the Messrs. Adler as receivers, the court, for reasons apparently satisfactory to itself, declined to make the appointment, and finally appointed Mr. Edgar Adler, one of the two parties first named, Mr. J. O. Thompson, and Mr. E. G. Chandler as receivers. Mr. Edgar Adler, of the two Adlers, was the one who had had practical experience, or less, in the coal and iron business.

Mr. Chandler had had considerable experience in the mercantile business, having conducted business there in the Birmingham district similar to the commissary business of the iron and coal companies. The interests of Mr. Thompson had been largely in farming and other matters, and he is also, as is doubtless known, the collector of internal revenue of Alabama.

So far as concerns my opinion of these two receivers as first appointed, I can see no good reason why, if harmony and cooperation had prevailed, that they should not have conducted the business about as well as the requirements demanded. But this lack of cooperation and the presence of more or less friction, after about a week, led the court to take the matter under further consideration, and I finally consented to serve as harmonizer; and of course with an effort to give the estate and its affairs the benefit of what practical *experience I had had* in the iron business.

I have been in the iron business seventeen years, in the management of furnaces, coal mines, ore mines, the manufacture of coke, and in the construction of furnaces, and I think that it is generally recognized, where I am known, that I know something about the business and have been reasonably successful. Therefore I was willing to give this matter, so far as I could, the benefit of my experience. In these gentlemen who were then associated with me I had the greatest confidence. They are all men of integrity—all stand well in the community; and after the appointment, in order to systematize the business I was appointed or elected by them as chairman of the receivers, so that instructions might be given through one source.

I had their hearty cooperation. They were ready and willing to do anything at any time that I desired them to do in connection with the business.

The first thing that I undertook to do—I am going into this statement to show that the business was handled as well under the circumstances as it could have been under any other circumstances, and I say that without any fear of being charged with being conceited or egotistical—the first question of course was the matter of finances, and it was alleged that the two gentlemen who were first suggested as receivers proposed to furnish means through their own efforts or from their own funds to operate the plants of the Southern Steel Company. I did not propose to do any such thing, even if I had the means. My opinion was that if the concern had any merit there would not be any serious trouble in financing it. I had had some similar experience before, although I am not a professional receiver, and I knew what might reasonably result. There was no large amount of funds on hand, of course. The receivers found about \$8,000 available in the banks for their purposes. They were left a heritage of something like a hundred and fifteen thousand dollars due by the company for wages. No wages had been paid in the month of October, the receivership having taken place on the 24th of October, and in one instance no wages had been paid in September. That was at one of the ore mines. The court in its decree directed that when funds were available these claims, regarded under the law as preferred claims, should be paid. The decree further provided that, if deemed advisable, the plants should be operated, if it could be done profitably. The stated time in the decree was not at the suggestion of the receiver, nor, as I understand, at the suggestion of the court, but was prepared by the attorneys at the time, Mr. Benners being one of those attorneys. Of course it was assumed that when the proper time arrived for the selection of trustees they would be elected, and if the plants were in operation at the time they would be turned over to the trustees.

Now, if you will let me diverge for a moment, when the receivers came into control of these properties they only assumed control of the properties in Alabama. There were properties in Georgia and Tennessee, for which separate receivers had been appointed. So their jurisdiction extended only over certain plants, consisting of two furnaces, a steel mill, a wire and rod mill, three coal mines, three ore mines, and one rock quarry. However, in their statement to the cred-

itors, which was placed on file, they gave such information as they could in regard to the other properties, particularly as to their available assets.

The receivers found these plants in Alabama in operation. The question was, Should the operation be continued? I want to state just here that when I consented to act as receiver it was on the specific condition that I should have the right to shut down any plants that were not profitable. I was not willing to risk my business reputation in operating plants that were losing money.

Of course, then, the first thing the receivers had to do in order to outline a policy was to investigate the situation as to the cost of production and as to the prices being received for the different products from the different plants. This was done with considerable care, and the fact was ascertained that, with the exception of filling some orders from one of the furnaces for iron that had been sold some months before, there was a loss at every point; a loss at the wire and rod mill; a loss at the steel mill. The company, of course, did not market any coal or coke or ore, but was a purchaser particularly of coke and ore. It did not have a sufficient supply.

As one item of manufactured products, of which several could be mentioned, the wire and rod mill manufactured nails from the rods, and wire fencing of different kinds, and some other little things. That was the source from which the company was supposed to have derived its greatest revenue, because aside from the manufacture of foundry iron for the market at one furnace, all the product of the steel mill, except the sale of some surplus steel billets, went to the rod mill to be converted into these finished products. These facts which I give you are simply taken from the report which was made and which is on file, giving the cost price and the selling price of all the commodities that were being produced.

As to the market for pig iron at the time, the cost of manufacture was greater than the market price. But that furnace engaged in the production of foundry iron was continued in operation in order to fill these higher orders, which was done as far as possible. When it was probable that it could not be done and a compromise could be made, compromises were made, sometimes at about \$2 a ton, which pretty nearly covered the profit on the iron if it had been shipped as between the then cost price.

The receivers, of course, saw that it would be very unwise to continue the operation of that plant beyond the time necessary to fill these orders, and of course in making iron for these orders you would make grades which did not apply. So they found themselves with iron on hand for which there was no market. They began to try to sell the iron. They did not succeed in selling it from about \$15 until it got down to \$13 and less. There was practically no market.

The same did not apply so much to the market on the finished product, except that the condition of the market was such that concessions had to be made in order to make sales at all, and there was more or less risk. You will remember now that the period I am covering is from the first day of the acute stage of the panic—for instance, the 24th of October—and following. The effort to sell this product was with a view of converting into money the mass of material which had been accumulated at the furnace and steel plant at

Alabama City, near Gadsden, it having already been paid for in the way of steel scrap and a whole lot of stuff. It was almost impossible to arrive at the quantity. The value, perhaps, was \$200,000 or \$250,000. The process of manufacturing this stuff and putting it into the manufactured product was continued from the 24th of October up to the 20th of December, manufacturing about an average of 75 or 80 tons per day of this finished product.

It is a fact that the receivers were able, by reduction in the cost of labor and other economies, to considerably reduce the cost of production, but not enough to show any profit to justify the continued operation.

The market for steel billets absolutely came to a standstill, and orders for it were canceled. We found it was very unwise to undertake the continued operation beyond the dates which I have mentioned; that is to say, the furnace manufacturing foundry iron was closed about the 1st of December, after an operation of about five weeks. The furnace at Alabama City, making iron for the steel mill, was closed down about the 4th or 5th of December; the steel mill about the middle of December, and the wire, rod, and nail plant about the 20th of December.

One reason, and although there was more than one reason, the main reason why this product could not be manufactured at a profitable price was the cost of the raw material of the company and the physical condition of its plants. They were in a wretched state; and, for instance, so far as the finishing mill is concerned, the records made up by the officers themselves showed that it would require \$200,000 to put the plants in condition to produce economically.

I have in my possession a sworn statement from the chief executive officer of that company in Alabama, in which he stated that this wire mill, from a given date at which a certain contract terminated between it and the Tennessee Coal and Iron Company for steel billets, lost money rapidly and continued to lose it up to the time of the receivership; also further statements in regard to the condition of that plant.

In addition to that, you gentlemen who are familiar with business conditions know that from the date of the receivership practically up to the present time industrial business has been completely prostrated. All other interests that I am interested in have been shut down to a standstill. The other iron companies in Alabama that are capable of running ordinarily, and could run at a loss if they chose, being in better physical condition, with ample finances, have come practically to a standstill. The Tennessee Coal and Iron Company is operating about 5 furnaces out of a total number of about 13. The next largest company, the Sloss-Sheffield Steel and Iron Company, is operating 3 furnaces out of 7. Immediately in the Birmingham district there are 4 furnaces which have been at a standstill from some time in October. So, practically, all business of that kind has come to a standstill because there was no market for the product and because there was no profit in prices as between the cost price and the market price.

You gentlemen will see that this concern was in a run-down condition physically and was laboring under other disadvantages, which any iron man understands, that is to say, its principal furnace plant was so located that it was handicapped and always will be by higher cost of freight on certain material, particularly its coke, there being

a difference of between 15 and 50 cents a ton. Those are conditions with which I am thoroughly familiar, because I contended with them for seven years continuously with other furnaces. You can readily see that under those circumstances sound business judgment would end the operation of the plants under such circumstances, and certainly when conducted at a loss, because the receivers felt that they were using the creditors' money, and if they were running at a loss they were reducing the assets of the estate.

Now, as to the question of finance. It does not make any difference whether the Messrs. Adler proposed to furnish a half million dollars or anything else to operate the plants. It is a question as to what could be done with them, and, as a matter of fact, Mr. Edgar Adler is on record on two occasions in court as stating that he would not have undertaken to do that. The record is here, in the hands, I think, of the referee, if you wish to see it. But that does not make any difference at all, except I wish to say this as to the matter of finances: The court authorized the receivers to issue \$200,000 of certificates for the purpose of selling them and using the proceeds to operate the plant. It authorized them to borrow money in any way they saw fit. The receivers not only did not sell one dollar of those certificates and thus increase the indebtedness of the estate, but they did not use money that was tendered to them from other sources, because it was not wise to continue the operation of the plants.

As to the actual results of finances, while they were left with \$8,000 with which to operate these plants, and they continued the operation, they have, since that time, not only met all their own obligations for pay rolls, for material furnished, but they have paid all the pay rolls of the old company that antedated the receivership, and paid every obligation connected with those pay rolls, except, perhaps, some \$5,000 or \$6,000 of checks which were issued to the commissary which the men sold, and those stand as a preferred claim, and will be paid, no doubt, very soon. Those obligations have not only been cancelled, but when I left Alabama the receivers had something near \$100,000 in bank. So I want to state emphatically that those plants were not shut down for the lack of means. When the receivers made their statement on December 13 they portrayed the situation in regard to these matters and stated to the creditors that they expected to shut down these plants, and gave their reasons; and there has never been from a creditor a single protest of any kind or description with reference to the matter. But, on the contrary, of those who are interested and most concerned quite a number have heartily approved of the action of the receivers in the matter. That is simply a plain business transaction, and I stated on this occasion that under the conditions, so far as I was concerned, I would not operate these plants further at a loss if I had all the money in the banks of Birmingham behind me for that purpose. Now, so much for that.

Now, I claim that the results obtained from this receivership and the care of the property have been as satisfactory as they could possibly have been under any kind of a receivership that might have been appointed. I do not hesitate to say that. Then, so far as concerns any damage having been done to these properties by reason of their being shut down, or a damage to the interest of the estate, the

period between the shut down of the last plant is only from the 20th of December to the 3d of February, when the trustees were elected.

I did not propose under any circumstances to be a trustee. I announced that very early; I announced that I was going to end my connection with this affair with the end of the receivership. I had served the estate in the way in which I proposed, and I did not intend to go any further. But as it was intimated some two or three or four weeks, three weeks probably, before the election of the trustees, who would probably be elected, one of them being a practical iron man in our district, I went to him and said, "Now, the policy of the receivership has been thus and so in reference to operating these plants. If your judgment is to the contrary, you shall have an opportunity to examine the whole situation, and to save any time I will undertake to put these plants in operation any day you say, you to be responsible for the results and any obligations assumed." He declined to do it, not only from the fact that he did not want to act because he had not been elected, but he said it was his judgment that they should not be operated.

Now, assuming that under some circumstances the receivers might be criticised if they shut down these plants and left them in a condition where they could not be started up promptly at any time, they kept the mines pumped out of water, except two ore mines that had been abandoned because they could not be used, one on account of the cost and the other on account of the quality of the material. They kept them free of water. They kept the furnaces in excellent condition. They kept men there for that purpose. They kept them closely guarded. They kept the property all covered as far as it was necessary to be covered, so that on twenty-four hours' notice practically, giving the men time to come back, which they would, because they are practically all idle, they could start up these plants. So there could be no loss in that particular, because the product, if manufactured, could not have been sold at a profit.

So far as concerns converting this raw material further into marketable condition, the market price had become such that you could not sell it any way, and there was no probability of its going any lower, or of iron or steel going lower. So no harm was done there. All the finished product that the receivers received and all they manufactured in the way of nails and fence wire, etc., was marketed, except, perhaps, there is about \$40,000 worth which had not been sold when I left Alabama, the purpose of the receivers being, so far as possible, to convert all the convertible assets into liquid shape so that when the court should decide to distribute, or any disposition should be made of it, it would be in form to do so.

The receivers were ordered by the court to make a full investigation of the books and accounts of this company, the conditions of its affairs, and to report in regard to the same. That is one of the first things they undertook to do. They found the books in considerable confusion, and it took some considerable time to get them straightened out so that this report could be made.

But bearing upon the financial condition of this company, an examination of the books disclosed the fact that there was a discrepancy between the book records of material on hand in the way of product at the furnaces and elsewhere as between the inventory and the book record, which should have coincided closely, of \$750,000.

The discrepancy in the accounts receivable and bills receivable increased this amount to over \$800,000. This \$800,000 had been treated as a profit by the company when it was an actual loss and should have been charged immediately to the profit and loss account.

So the result was that the showing was that this company had been losing money continuously for a long time, until, if these shortages had been charged to the profit and loss account, it would have shown about \$1,300,000 loss as against a supposed profit. These are facts found in the report which I have filed, and they stand on record in the court, and every creditor and every interested party has had access to them, and there is no dispute of them, because this inventory has been taken again, and in the same report which the receivers will make in the next few days this will be more clearly demonstrated.

Now, as to that financial condition, this company had managed to incur an indebtedness on unsecured claims in the form of notes and open accounts of about \$2,200,000. There was an additional liability of about \$1,000,000, and it was a mere contingency as to there being any equity in the collateral which was put up for the liability. For instance, when the company had exhausted all of its resources for raising money, they put in trust certain stocks of certain subsidiary companies, of which they had acquired ownership through purchase of those stocks. If you will pardon me for digressing, that form of organization proved afterwards that the whole was tied together with a rope of sand, because these stocks through which the company had ownership, the properties not having been deeded to the parent company, were put into the Trust Company of America, and against them were issued or authorized to be issued \$2,000,000 of collateral trust notes; that is, in addition to the other indebtedness; in addition to the bonds on the properties. There were \$3,000,000 of bonds on certain properties, the original Southern Steel Company properties in Alabama. Then there was about \$600,000 on one of the subsidiary companies; about \$450,000 to \$500,000 on another; and \$1,000,000 on another.

The company proceeded to raise money on these collateral trust notes. They sold \$734,000 of those notes; at what price I do not know; at least I do not now remember. Perhaps it was not disclosed in the statement. But they could find no further market for these collateral notes. So they made time notes of the company, its own notes, and gave these collateral trust notes as security for the short-time notes.

In the first instance, they borrowed \$150,000, for which they gave two to one of these collateral notes. In the next place, they borrowed \$320,000, for which they gave three to one. The danger has been, and the danger is, unless those notes are paid, these collateral notes will fall into the hands of the holders of the company's straight notes and altogether become a claim against this stock that is trusted in the Trust Company of America; and if so, it will disintegrate the whole property; that is to say, these three properties last acquired, partly in Alabama and in Tennessee and in Georgia, will be dissipated.

Therefore, there is only a contingency as to there being any equity in that one million or eleven hundred thousand of money to pay those notes. So you might say that the indebtedness of this company as it *stands to-day* is more than \$3,000,000.

To meet these obligations the receivers find assets that perhaps may be converted into \$700,000 or \$800,000, in the way of material and accounts receivable, etc. That is the financial status of that company.

The receivers believe and feel assured, really, that the statement which they have made in regard to the affairs of this company, as startling as it appears to be, is perhaps one of the greatest services they have rendered all of the interested parties, because it is the first time evidently that anyone ever knew where they stood—whether a creditor, a stockholder, or a bondholder—and it has aroused them, therefore, to begin to do something to try to save these properties or to reorganize them.

I have been in constant correspondence with a prominent attorney of New York, of the firm of Hornblower, Miller & Potter, in regard to reorganization, giving all the assistance I could, and they have in a measure adopted a plan of reorganization, and they have borne out the testimony of the receivers to this effect. In this proposed plan they find it necessary to provide \$1,000,000 at least to rehabilitate the plants of the company, and \$1,000,000 for working capital, and half a million dollars to take up the notes I am talking about. So they are proposing to undertake to raise two and a half million dollars to put the property on its feet again.

Senator JOHNSTON. Outside of its debts?

Mr. BUSH. Outside of its debts; and there will be some compromise made with the creditors; I do not know what. That does not affect the bonded indebtedness to the extent of \$5,050,000.

I have wearied you with these details, probably, in order to justify the receivers in the action they have taken, and thereby indirectly to justify the action of Judge Hundley in appointing the receivers. If that be true, then nobody has been harmed and no damage done.

Senator JOHNSTON. I wish to ask you one question, Colonel Bush, if you will permit me.

Mr. BUSH. Certainly.

Senator JOHNSTON. Have any complaints been made by any creditor of the action or conduct of the receivers?

Mr. BUSH. Not one that I have heard of. I will get to that after a while to show you just to the contrary. I have a document which I think will cover that point completely.

I want to say this: As I stated in the beginning, I am not here to champion Judge Hundley, but I claim that the conduct of the receivers, and the condition of the properties, the condition of the affairs of the company this day, fully justified him in the appointments he made, however much desired the other appointments were. But I wish to call the attention of you gentlemen specifically to this one fact, which seems to me more clearly to vindicate his action in declining to appoint both the Messrs. Adler as receivers.

You will understand that this petition was made by three creditors only, and when it was made it represented a comparatively small sum. When this petition was made the attorney of the bankrupt was there undertaking to get an arrangement that would be satisfactory to the bankrupt in the appointment of receivers; and the minutes of this company show that Mr. O. R. Hood, their attorney, was clothed with power to arrange for this receivership in a manner

that was satisfactory to the bankrupt. The court, of course, did not think it was its duty to please the bankrupt in this case, but to take care of the other interests that had been so much injured. These minutes are here and are available.

Representative BURNETT. I wish to ask you a question here, for fear I may forget it. That was not called to Judge Hundley's attention as a reason for not appointing the Adlers?

Mr. BUSH. Not that I know of.

Representative BURNETT. He did not have those minutes?

Mr. BUSH. No; but he knew that Mr. Hood was there representing the bankrupt.

Senator JOHNSTON. Mr. Hood stated yesterday that he had authority.

Mr. BUSH. Sure.

Representative BURNETT. He was the attorney for them.

Senator CLARKE, of Arkansas. He wrote the letter upon which the whole proceeding was predicated.

Representative BURNETT. That was in accordance with the bankruptcy law.

Mr. BUSH. If these two gentlemen were essential to the care or reorganization of the property, why did not the creditors when they all met elect one or both of them? They did not elect either.

Representative BURNETT. One or both of whom?

Mr. BUSH. The Messrs. Adler as trustee.

Representative BURNETT. They did not elect any of the other receivers?

Mr. BUSH. No, sir. The other receivers, so far as I know, are in the position I am. They did not care to be elected.

Representative BURNETT. Did not Adler also decline it?

Mr. BUSH. Possibly so. I do not know what he did, but I am talking about their action in the matter. The point I am trying to make is simply this, that there is no evidence which has been found where the creditors demanded for their interest that these gentlemen originally should have been appointed.

Senator CLARKE, of Arkansas. Outside of the three small ones who were on the original petition?

Mr. BUSH. Outside of the three on the petition.

Senator CLARKE, of Arkansas. The original petition?

Mr. BUSH. The original petition.

Senator CLARKE, of Arkansas. When the creditors assembled for the purpose of electing trustees what action did they take in reference to the approval or disapproval of the action of the receivers?

Mr. BUSH. I have a document here. This is a clipping from the Age-Herald, of Birmingham. I did not attend the meeting of the creditors. I do not know whether the other receivers were there or not. I know that the receivers had no intimation of any action whatever being taken by the creditors with reference to their conduct or of the affairs of the company. I did not know of this until I saw it in the papers. This is a part of the proceedings of the creditors' meeting:

One of the features of the hearing was the motion made by W. P. G. Harding, president of the First National Bank, and who represents a large block of the creditors, which motion was seconded by Augustus H. Benners—

The gentleman who appeared before you yesterday—
attorney for the petitioners named in the first petition, and which was unanimously passed, indorsing the work of the receivers. This motion was as follows:

"That the thanks of the unsecured creditors and all parties in interest of the Southern Steel Company are due to and are hereby tendered to T. G. Bush, Edgar L. Adler, J. O. Thompson, and Elijah G. Chandler, as receivers of the said company, who were appointed by United States Judge Oscar R. Hundley, for the prudent, careful, and able management of the trusts confided to their keeping."

That answers your inquiry, Senator Johnston.

Senator JOHNSTON. Yes.

Mr. BUSH. I want to say this: It occurs to me, without having any personal interest in the matter, in the interest of justice and fairness, that this charge against Judge Hundley, so far as it concerns the matter of the receivership, is frivolous, and it is an attempt to inject a business matter into politics in which it has no place.

Senator CLARKE, of Arkansas. Colonel Bush, those are conclusions which we can draw for ourselves. There is one matter of fact which I should like to have you cover by a statement, as you promised you would do. You made a statement that Mr. Benners did not represent the interest of the bondholders, the stockholders, or the creditors. You said that you would cover this statement by a later statement. Now is a good time to make that statement.

Mr. BUSH. As I understand, without having the testimony of Mr. Benners before me, it was a criticism of the receivers, or that the results were not satisfactory to the creditors. This resolution which I have just read is my answer to that.

Senator CLARKE, of Arkansas. Do you mean to say that he was not retained on the part of the three creditors named in the petition which he presented?

Mr. BUSH. No, sir; I do not say that.

Senator CLARKE, of Arkansas. You mean that he did not represent the true, broad interests of the parties by the course he was taking, and you did not mean to say that he did not technically represent them on the record?

Mr. BUSH. No. I think it is reasonable to assume, and I do not think there is any doubt, that these creditors were represented at that meeting.

Senator CLARKE, of Arkansas. State, if you know, how much the three creditors who formed the original petitioners represented of the \$3,000,000 or \$4,000,000 of unsecured debts.

Mr. BUSH. I do not think it was \$25,000. I do not remember distinctly, but I do not think it was over that. I could furnish you the information accurately any day you want it.

Senator CLARKE, of Arkansas. Now, let me ask you a few more questions. Do you know how long it was after the original petition was filed before it was supplemented by the intervention of additional creditors?

Mr. BUSH. No, sir; the records are here to give you that information.

Senator CLARKE, of Arkansas. Do you know whether or not all the creditors agreed that the corporation was insolvent, and was therefore a fit subject to be administered in the bankruptcy court?

Mr. BUSH. No, sir, I do not; but I would state this: The attorney for the bankrupt stated to me that one of his main purposes was to

prevent, if possible, having the estate declared insolvent, although he was urging it to be declared a bankrupt. I judged from his statement that he thought it would have some bearing upon the form of reorganization.

Senator CLARKE, of Arkansas. You seem to have been appointed subsequently to the original order of the court appointing Adler, Thompson, and Chandler. What additional showing was made to the court to justify it in supplementing its original action by the appointment of yourself?

Mr. BUSH. My understanding was that during that week there was no action practically taken by the receivers, neither one taking the initiative. I do not know, but probably Mr. Thompson or Mr. Chandler may have brought up the matter of this existing friction or inactivity to the attention of the court; that they could not go on as under the then existing conditions; that something must be done to bring about—

Senator CLARKE, of Arkansas. Misunderstanding between the receivers or misunderstanding between the creditors and the receivers?

Mr. BUSH. Between the receivers only, I think. I do not think it was anything serious, but I—

Senator CLARKE, of Arkansas. Had they made the bond up to that time?

Mr. BUSH. Yes, sir.

Senator CLARKE, of Arkansas. Upon whose suggestion were you appointed?

Mr. BUSH. I think it was chiefly a matter with the court. I was telephoned from Huntsville. Some one said the judge wanted to know if under the circumstances I would act.

Representative BURNETT. Who telephoned you?

Mr. BUSH. I do not know. I think he telephoned me himself during the day, and I think Mr. Thompson, one of the receivers, telephoned me.

Senator CLARKE, of Arkansas. Had you made to him any application for the place?

Mr. BUSH. No, sir. In the first instance I declined to have any connection with it.

Senator CLARKE, of Arkansas. Who applied to you on the occasion when you declined?

Mr. BUSH. There were several; two or three of the creditors.

Representative BURNETT. Give their names, Captain, please.

Mr. BUSH. I can not recall them now. Several came to see me to know if I would serve. I can not recall them just now, but I had several interviews with them.

Representative BURNETT. Please state the names of those with whom you had interviews?

Mr. BUSH. I think one of them was Mr. Malone, who is in the insurance business. I think another was Mr. Van, of Van & Young Supply Company. They came and discussed the matter with me. Mr. Thompson came to see me as one of the receivers, to ask me if I would not help them out, and I declined. I sent him to two or three other people. I simply did not want to be—

Senator CLARKE, of Arkansas. On the occasion when you were appointed you did not seek the place or authorize anyone else to present *your name*?

Mr. BUSH. No, sir. I said to Mr. Thompson, "If you get into a condition where you have got to have some help, I will try to help you out." But I did not expect anything to come from that; and when the judge acted in the matter I was phoned and asked if I would accept under the circumstances.

Senator CLARKE, of Arkansas. What business were you engaged in at the time?

Mr. BUSH. The iron and coal business.

Senator CLARKE, of Arkansas. Were you fairly well employed?

Mr. BUSH. Yes, sir; about as much as I desired to be.

Senator CLARKE, of Arkansas. Did the fact of your being added to the list of receivers increase the cost of the receivership?

Mr. BUSH. I hope not. There has been no question raised as to the compensation of the receivers. So far they have not made their report, and nothing has been done in regard to the matter.

Representative BURNETT. What are they asking for?

Mr. BUSH. They are asking for nothing particularly that I know of, except that I have stated to the receivers that I would not, under any circumstances, consent to an amount exceeding about \$30,000 for the four receivers.

Representative BURNETT. And how much for lawyers' fees?

Mr. BUSH. I had no right to tell the lawyers, but I did. I told them I would protest against an amount exceeding \$15,000 for the three attorneys. I do not know what the action of the court will be. I do not suppose the receivers will ask for any particular amount. I suppose it will be referred to a referee, and he will investigate. I do not think it would be a proper matter for the receivers to name an amount.

Senator CLARKE, of Arkansas. You also said that you had an understanding when you were appointed receiver that you could shut down any plant at any time, whenever you found it could not be operated profitably?

Mr. BUSH. Yes, sir; that was the condition.

Senator CLARKE, of Arkansas. With whom did you have that understanding?

Mr. BUSH. I sent the message to the court through Mr. Thompson, who was then in Huntsville. I was in Birmingham.

Senator CLARKE, of Arkansas. You say you paid off that amount of floating indebtedness, which aggregated \$115,000, due to labor?

Mr. BUSH. Lacking a few thousand dollars, Senator.

Senator CLARKE, of Arkansas. And that you have on hand now about \$100,000 of money?

Mr. BUSH. Yes, sir; near that.

Senator CLARKE, of Arkansas. From what source derived?

Mr. BUSH. From converting raw material on hand into money, collecting money, commissaries, and so forth, so far as the men were willing to take checks for them.

Senator CLARKE, of Arkansas. Then, if I understand you, there never arrived a time when it was necessary for the receivership to use its credit for the purpose of raising additional funds?

Mr. BUSH. Not a dollar.

Senator CLARKE, of Arkansas. That, as a matter of fact, you had available promises of advances which you could have employed in that way if you had found a way in which it could be done profitably?

Mr. BUSH. Yes, sir; we did not do it.

Senator CLARKE, of Arkansas. You found no way in which in your capacity of receivers that could be done?

Mr. BUSH. No, sir; that is true.

Senator CLARKE, of Arkansas. When the creditors came to survey the situation they found that it was not \$250,000, but \$2,500,000 which was necessary to put the company on its feet as a going business proposition.

Mr. BUSH. That seems to be the understanding.

Senator CLARKE, of Arkansas. That is all.

Representative BURNETT. The \$250,000 that was required was necessary to start it running again or keep it running?

Mr. BUSH. It was already running.

Representative BURNETT. I know, but was not something necessary to pay the pay rolls?

Mr. BUSH. We raised the money to pay them.

Representative BURNETT. Out of what there was on hand?

Mr. BUSH. What we could collect and what we could sell.

Representative BURNETT. And what you made?

Mr. BUSH. No, sir. I suppose the receivers in their operations, by the reduction of costs, and so forth, might probably have made \$25,000 during the five or six weeks, but that was merely nominal.

Representative BURNETT. How much commissaries were on hand?

Mr. BUSH. In the jurisdiction of the Alabama receivers, about \$75,000 or \$80,000.

Representative BURNETT. That was converted into cash?

Mr. BUSH. Not all. That was reduced to something like \$40,000 on the 1st of January.

Representative BURNETT. Then they had a lot of finished products which they sold?

Mr. BUSH. Yes, sir.

Representative BURNETT. And paid off the pay rolls?

Mr. BUSH. Yes, sir.

Representative BURNETT. The current pay rolls and the past pay rolls, both?

Mr. BUSH. Yes, sir.

Representative BURNETT. When were they paid?

Mr. BUSH. At different times. The first week after the receivership they paid one-third. The first pay day they had in November they paid one-third of the October pay roll; those that had not been paid entirely.

Representative BURNETT. A week after the appointment of the receivers?

Mr. BUSH. No; it included that week. The pay days come about the 15th and 20th of each month. For instance, the receivers took charge on the 24th-25th of October. The pay day came about the 20th of November. The receivers paid that one week of their own pay roll, and paid one-third of the other pay rolls where they did not pay them entirely.

Representative BURNETT. You made an effort to borrow some money from the banks?

Mr. BUSH. No, sir.

Representative BURNETT. Did you not try to borrow some money from the Gadsden banks or either of them?

Mr. BUSH. No, sir: I had conferences and asked them whether, if I needed it, they would lend it; I did not know that I would need it.

Representative BURNETT. Nor from the Birmingham banks?

Mr. BUSH. No, sir. The promise that I had reference to was from one of the Birmingham banks. That is the only promise I had of any funds. I had a conference with the bankers in Gadsden; I told them I thought I would not need it, but asked them if they would furnish a certain amount if I needed it, but they did not agree to it.

Representative BURNETT. What banks in Gadsden?

Mr. BUSH. I had conferences with all three. There are three of them there, I think.

Representative BURNETT. Yes.

Mr. BUSH. I met representatives of the three banks.

Senator DILLINGHAM. And you secured no promises?

Mr. BUSH. No, sir. I told them I might not want it, or I might want it only in part. I presented it to them because I knew from the local standpoint that they had been interested in locating those plants at Gadsden, but they did not seem to take enough interest to help, if I should need it.

Representative BURNETT. Did you not negotiate with one of the Birmingham banks for \$16,000?

Mr. BUSH. No, sir. I got a promise of what I wanted—\$15,000 or \$20,000, but I did not use it.

Representative BURNETT. You did not run the plants outside of the State?

Mr. BUSH. No, sir.

Representative BURNETT. You had nothing to do with them?

Mr. BUSH. No, sir.

Representative BURNETT. You had the principal management of the plant after you came in?

Mr. BUSH. No, sir. I was the spokesman, but I made it a point never to undertake any matter of any kind without the concurrence of the other receivers. I made them share the responsibility.

Representative BURNETT. How many times did Thompson or Chandler ever visit the Gadsden plant?

Mr. BUSH. I do not know.

Representative BURNETT. Did they ever go there at all?

Mr. BUSH. I do not know whether they did or not. I do not think it was necessary.

Representative BURNETT. You went?

Mr. BUSH. Yes, sir.

Representative BURNETT. You thought it was necessary for you to go?

Mr. BUSH. Yes, sir.

Representative BURNETT. You were in the active management of it?

Mr. BUSH. I was to that extent.

Representative BURNETT. You say the attorneys want about \$15,000. Who are the attorneys?

Mr. BUSH. The attorneys are Mr. Benners—

Representative BURNETT. For whom? Whom did he represent?

Mr. BUSH. He was supposed to represent—I suppose he was engaged by Mr. Adler. These arrangements were all made before I became a receiver.

Representative BURNETT. Then you do not know of your own knowledge that he was the attorney for one of the receivers?

Mr. BUSH. I do.

Representative BURNETT. Which one?

Mr. BUSH. I say he was engaged by Mr. Adler. I think Mr. E. K. Campbell was engaged by Mr. Chandler; Mr. Dryer by Mr. Thompson. I thought three were quite enough. I did not bring in one.

Representative BURNETT. Campbell by Chandler and Dryer by Thompson?

Mr. BUSH. Yes, sir.

Representative BURNETT. Three firms of lawyers, and you say you did not employ one?

Mr. BUSH. I did not think it was necessary to have any more. One would have been enough for me if I had started out in the first instance.

Representative BURNETT. What firms were they?

Mr. BUSH. Which?

Representative BURNETT. Of lawyers.

Mr. BUSH. I think Mr. Benners is of Percy & Benners; Mr. Campbell, I think, is of Campbell & Johnston. I do not know who Mr. Dryer has as a partner. I do not think he has one; I am not sure.

Representative BURNETT. Dryer is at Talladega?

Mr. BUSH. No, sir; he is at Birmingham.

Representative BURNETT. Dryer has no partner?

Mr. BUSH. Not that I know of. I do not think he has a partner in Birmingham.

Representative BURNETT. Did Mr. Benners, of Percy & Benners, as a matter of fact, at the creditors' meeting, represent more than half the creditors?

Mr. BUSH. I do not know anything about that. I was not there, and do not know whom he represented. Not knowing what Mr. Benners said, except that I had reason to infer that he must have criticised or objected to the receivership, I produced this resolution to show that he was there and seconded the motion, and consequently all the creditors he represented must have indorsed the action of the receivers.

Representative BURNETT. You do not know that he criticised at all the management by the receivers?

Mr. BUSH. I do not know, sir, that he did. I know he must have criticised the results if he said the interests were damaged by reason of not appointing one set of receivers and appointing another. I undertake to give the results and to show that there was no damage.

Representative BURNETT. He said the interests had been damaged by not running the concern?

Mr. BUSH. Did he say that?

Representative BURNETT. I do not remember that he did. Mr. Hood made some such statement as that.

Mr. BUSH. If he did, he did not know what he was talking about. Representative BURNETT. I do not think he was criticising the management by the receivers.

Mr. BUSH. He did, if he said that it ought to have been kept running when it was not.

Representative BURNETT. Let me ask you a question. If the whole properties in Georgia and Alabama and Tennessee had been under one management, the expenses would have been less?

Mr. BUSH. What expenses?

Representative BURNETT. The expense of conducting it; the expense of the receivership.

Mr. BUSH. I suppose so.

Representative BURNETT. Other expenses were entailed in Georgia and Tennessee by having separate receiverships?

Mr. BUSH. Of course, but the chief receivership in Georgia could not have been avoided, because it was in the State court, and the United States judge refused even to make a request to them to come into his own court.

Representative BURNETT. As ancillary from the Alabama court?

Mr. BUSH. No, sir; from his own court in Georgia, because Mr. Adler was receiver of other properties which were immaterial, which amounted to very little, outside the properties Mr. Hurt was receiver for in the name of the Georgia Steel Company.

Senator CLARKE, of Arkansas. Which Adler?

Mr. BUSH. Edgar Adler; the same one who was receiver in Alabama. Before I was appointed at all he was appointed receiver of certain properties in Georgia.

Representative BURNETT. By the Georgia court?

Mr. BUSH. Yes, sir; by the Georgia Federal court.

Representative BURNETT. Mr. Thompson was not?

Mr. BUSH. No, sir. The property in Tennessee was in Judge Clarke's court, and Judge Clarke appointed a man named Nixon receiver. Judge Clarke appreciated the fact that the properties ought to be together, and announced his intention of appointing me receiver, which I did not care anything about, except he thought they ought to be under the control of one management. But Judge Newman having decided that it was not proper to do it in Georgia, Judge Clarke waived his action in Tennessee. My understanding is that they took the position that they would not transfer these properties until trustees were elected. Therefore, just as soon as the receivers got things in shape so that they could make a proper report and turn over the properties properly, they suggested to the court that the trustees be elected as early as practicable, so that all these properties might go under one control. There was no importance attached to it for control of operation, because they would have been operated at a loss if they had been.

Senator CLARKE, of Arkansas. What receivers made that suggestion?

Mr. BUSH. The receivers in Alabama. It was for the purpose of keeping the property under one control, so that the reorganization could take place.

Representative BURNETT. You made the suggestion for the appointment of trustees?

Mr. BUSH. Yes, sir.

Representative BURNETT. You made it to the court?

Mr. BUSH. Yes, sir.

Representative BURNETT. Was it in writing?

Mr. BUSH. I do not know whether it was or not.

Representative BURNETT. You as one of the receivers.

Mr. BUSH. I suggested to our attorneys to do it. I do not know in what form they made it. Mr. Campbell or Mr. Dryer conveyed the suggestion of the receivers to the court. Just in what form they did it, I do not know.

Senator CLARKE, of Arkansas. The receivers have done nothing from first to last in the management of the company to protract the period of their receivership?

Mr. BUSH. Not at all. I have been desirous of getting out as fast as possible.

Senator CLARKE, of Arkansas. You say you have been connected with the coal and iron business in Alabama for the last seventeen years?

Mr. BUSH. Yes, sir.

Senator CLARKE, of Arkansas. What concerns have you been connected with and in what capacity?

Mr. BUSH. I have been for seventeen years president of the Shelby Iron Company, which owns two furnaces. I organized and became president of the Alabama Consolidated Coal and Iron Company and was president of that company for seven years. That company had four furnaces, three large coal mines, about a dozen coke ovens, and three large ore mines.

Senator CLARKE, of Arkansas. What was its capitalization?

Mr. BUSH. It had about \$5,000,000 of stock. One and a quarter millions of that stock—preferred stock—was afterwards redeemed in 5 per cent bonds.

Senator CLARKE, of Arkansas. Are you interested in those companies, or either of them, now?

Mr. BUSH. I am president of the Shelby Iron Company. I resigned a year ago from the Consolidated Company. That company paid dividends from three months after it was organized until I left it, and paid interest on its bonds.

I think I may be permitted, as a citizen, to say this in commendation of Judge Hundley as a suitable judge for that court.

Senator CLARKE, of Arkansas. You may express an opinion about it, if you like.

Mr. BUSH. I should like to say that while I belong to a different political party from that of Judge Hundley, I think he is acceptable to the people. I have known him for twenty years. I served in the legislature with him about twenty years ago. I have known him well since then. He is a good lawyer. He stands well socially. He is a man who has acquired by his own efforts quite a competency, and so far as my knowledge of the feeling of members of the judiciary and the merchants and business men of our section of the country goes, he is very highly approved, and I think that approval has been strengthened by his conduct of the cases and the dispatch of business in the court since his incumbency. I think I can afford to testify that much. Judge Hundley is under no obligations to me and I am under none to him whatever, but I think it is just to say that much in his behalf.

Representative BURNETT. You say that Hundley acquired his competency by his own efforts?

Mr. BUSH. Yes, sir. That is my understanding. I do not mean all the property he has. I understand he inherited a good property from his father. But I have been informed by his friends—I think he told me himself—that his father refused to aid him financially until he made a showing for himself. I do not know that to be a fact. I do not know that this is a matter of importance one way or the other.

Representative BURNETT. I think not, either, but I understood you to say that he acquired a competency by his own efforts.

Mr. BUSH. That is my understanding. I will qualify it by saying that I have no personal knowledge of that.

Representative BURNETT. Is it your understanding that he inherited considerable property from his father's estate?

Mr. BUSH. Yes, sir; that is in addition to that.

Representative BURNETT. You said something about injecting politics into this matter. What politics has been injected into it?

Mr. BUSH. I have seen it stated that this is a political office, and it is an office, I suppose, that the Democratic party would like to see filled by a Democrat.

Representative BURNETT. Do you think a judicial office is a political office?

Mr. BUSH. I do not think it ought to be, Mr. Burnett, but I think it is. It is made so.

Representative BURNETT. Have you heard that any Member who is protesting here expected or hoped that any Democrat would be put in?

Mr. BUSH. No, sir; but I have seen it stated in the papers as coming from Washington that the opposition was in part due to the fact that the Democratic Representatives from Alabama expected that if they could hold this appointment over, possibly a Democrat might be President next time, and they could get a Democrat on the bench.

Representative BURNETT. A year and a half?

Mr. BUSH. Yes, sir; it is a long time to look ahead.

Representative BURNETT. A long ways off. You saw that in the papers?

Mr. BUSH. Yes, sir.

Representative BURNETT. And that is what you meant by injecting politics into it?

Mr. BUSH. I know politics gets into these things. I am not a youth.

Representative BURNETT. Do you think Senator Pettus a year and a half ago had any political opposition to this confirmation?

Mr. BUSH. I do not know. Senator Pettus is dead and gone.

Representative BURNETT. Do you think he was capable of it?

Mr. BUSH. Not knowingly. But I do not propose to discuss what Senator Pettus said or did.

Representative BURNETT. You know he filed the first opposition ever made?

Mr. BUSH. I think he did. I heard so. I do not know it.

Representative BURNETT. Referring to the two creditors who asked you to take the receivership, Malone and the other one, one of them had a claim of about \$2,700?

Mr. BUSH. I do not remember. That did not affect me one way or the other.

Representative BURNETT. I know.

Mr. BUSH. I happened to mention that some one suggested the matter to me.

Representative BURNETT. The other was an insurance broker who had a claim against the company for insurance?

Mr. BUSH. Probably so.

Representative BURNETT. Did you not state to Judge Hundley or write to him, or have someone write to him, that you thought the concern could be run and that you could finance it?

Mr. BUSH. No, sir. I said to Mr. Thompson, when he urged me in this matter, "I might do it if I can be of any service." He said "Will you not consent under certain circumstances to aid?" and I wrote Mr. Thompson a note. I said to him, "If it appears necessary or desirable that I should do this to aid you, I will undertake to do it. I will not guarantee anything. I will undertake to finance it, if it is necessary to be done," but with the distinct understanding that I would not accept the trust if I did not have the privilege of shutting down the plants that were not profitable.

Representative BURNETT. You told Thompson that?

Mr. BUSH. Yes, sir.

Representative BURNETT. You did not tell Judge Hundley that?

Mr. BUSH. No, sir; I did not see him.

Representative BURNETT. In his order appointing you there was no such statement?

Mr. BUSH. I suppose he made the statement to the Judge, because I told him to do it, if I was to be appointed.

Representative BURNETT. You have not seen the decree?

Mr. BUSH. The decree specified to operate, if it could be done profitably.

Representative BURNETT. You do not know the amount of the claims of these creditors?

Mr. BUSH. Oh, no; and I do not care.

Representative BURNETT. I did not ask for that. That was not an answer to my question.

Mr. BUSH. Then I do not know.

Senator CLARKE, of Arkansas. Which creditors do you refer to?

Representative BURNETT. The creditors who asked him to act.

Senator CLARKE, of Arkansas. Oh, yes.

Representative BURNETT. Did you not confer with Senator Johnston and get him to write Judge Hundley or suggest to him your name as receiver and state that you could finance it, or something of that kind?

Mr. BUSH. No, sir.

Representative BURNETT. Nothing of that kind?

Mr. BUSH. No, sir.

Senator JOHNSTON. Did you ever have any conference with me about it?

Mr. BUSH. Not the slightest.

Representative BURNETT. That is all.

STATEMENT OF AUGUSTUS BENNERS—Resumed.

Representative BURNETT. I should like to ask Mr. Benners a few questions.

Senator DILLINGHAM. Let him be recalled.

Mr. Augustus Benners appeared before the subcommittee.

Representative BURNETT. In regard to the resolution of thanks to the receivers adopted at the creditors' meeting, I will ask you to state what the resolution was. Was it in writing?

Mr. BENNERS. No, sir. At the meeting of creditors at which trustees were elected, about a week ago, some little unpleasantness was created by some one putting in nomination Mr. J. O. Thompson for one of the trustees, and with some little feeling, I think, he got up and stated it was done without his consent or knowledge and that he desired that his name be withdrawn. After the trustees were elected and the meeting was about to adjourn, Mr. Harding, of the First National Bank, got up and moved verbally that the thanks of the creditors be extended to the receivers. I was present, voting these creditors' claims, with another gentleman with whom I was associated, voting nine-tenths of them in number and amount. It occurred to me that it was a courtesy simply to extend the thanks of the creditors to the receivers, exactly in the manner that you accept with regret the resignation of a director whom you have put out. It was nothing in the world but a little passing courtesy to smooth over a little ill-feeling that had been perhaps engendered at that meeting. It had no significance whatsoever.

Representative BURNETT. That was all of the motion?

Mr. BENNERS. That was all of the motion—"I move that the thanks of the meeting be tendered the receivers." Afterwards I saw the resolution in the newspaper, and it had been elaborated and given a turn which never occurred to anybody at the time it was adopted.

Representative BURNETT. And was not the resolution which was offered there?

Mr. BENNERS. The resolution was simply "I move that the thanks of the meeting be tendered to the receivers."

Representative BURNETT. Do you know who elaborated it or changed it?

Mr. BENNERS. No; I have no idea about that. Judge Hundley has a press agent down there. Who he is I do not know.

Representative BURNETT. Do you know anything about the amount of the claims of Malone and of the Young & Van Supply Company?

Mr. BENNERS. No, sir; I do not.

Representative BURNETT. Do you know anything about the amount of them?

Mr. BENNERS. No, sir; I do not.

Representative BURNETT. Are they large or small?

Mr. BENNERS. The claim of the Young & Van Supply Company, I think, is for some \$5,000 or \$6,000. That is my recollection. The claim of Malone, I imagine, is a small one. He is an insurance man. Probably it is for an insurance premium or something of that kind.

Senator CLARKE, of Arkansas. In what capacity is Mr. Harding connected with the First National Bank?

Mr. BENNERS. He is president of the First National Bank.

Senator CLARKE, of Arkansas. Is that a bank of any importance in your town?

Mr. BENNERS. Yes, sir; it is the bank I referred to yesterday.

Senator CLARKE, of Arkansas. How many creditors were personally present at the meeting at which the trustees were selected?

Mr. BENNERS. A very small number, Senator. I do not recall a single claim which was voted in person by the owner.

Senator CLARKE, of Arkansas. About how many would you say were present?

Mr. BENNERS. As I stated, I can not recall a single creditor who voted in person.

Senator CLARKE, of Arkansas. How many were there by their representatives?

Mr. BENNERS. I think there were probably a dozen lawyers, about, who voted claims. All the claims were voted either by lawyers or by proxies.

Senator CLARKE, of Arkansas. The entire number of persons assembled did not exceed a dozen?

Mr. BENNERS. There were a great many more people in the court room. I should say there were fifty or seventy-five people in the court room.

Senator CLARKE, of Arkansas. Interested in the estate?

Mr. BENNERS. A great many of them were. It was the usual courtroom crowd—parties, attorneys, spectators, officials.

Senator CLARKE, of Arkansas. And there were about a dozen attorneys representing creditors?

Mr. BENNERS. About a dozen participating in the proceeding.

Senator CLARKE, of Arkansas. In offering and adopting the resolution it was not the purpose to condemn anything the receivers did?

Mr. BENNERS. No, sir.

Senator CLARKE, of Arkansas. If it had any purpose, it did not have that purpose?

Mr. BENNERS. No, sir. I do not understand that the receivers have done anything to be condemned for. If my testimony created any such impression, or if anybody else's testimony has created any such impression, I think it should be corrected.

Senator CLARKE, of Arkansas. You complained, I believe, that the failure to appoint Adler had the effect of stopping the operations of the different plants constituting the property?

Mr. BENNERS. Yes, sir. I think had the Adlers been appointed the entire plant would not have been shut down. I think there would have been a reduction in the number of mills, and so forth, actually operating.

Senator CLARKE, of Arkansas. Would not the desirability of continuing the operation of the plant have depended upon whether it could be operated profitably?

Mr. BENNERS. To be sure.

Senator CLARKE, of Arkansas. Are you prepared to say whether any sort of management would have made operation of the plant profitable?

Mr. BENNERS. Yes, sir; there were certain portions of the plant that could be run very nicely.

Senator CLARKE, of Arkansas. Would you put your judgment in a matter of that kind against that of Captain Bush?

Mr. BENNERS. No; I would not. Captain Bush has had some practical experience as an operator. I am a lawyer, and have had none. In a matter with which he is familiar and I am not I would not match my judgment against his.

Senator CLARKE, of Arkansas. When you made the statement that you thought it could have been operated profitably under the management of the Adlers, you merely gave a surface opinion based on a general knowledge of this district?

Mr. BENNERS. Yes, sir; a knowledge of the men, and that sort of thing.

Senator CLARKE, of Arkansas. Are you familiar with the history of the several plants as it was made under the management of those who owned them?

Mr. BENNERS. Yes, sir; of some of them.

Senator CLARKE, of Arkansas. It is your knowledge that the history of the operations of the plants shows a profit?

Mr. BENNERS. Yes. If I may go into detail about that sort of thing, there are certain plants out of which considerable money was made. Lacey & Butte, the owners, made considerable money out of them and then sold their property to the Southern Steel Company at a very handsome profit.

Senator CLARKE, of Arkansas. I am talking about the management of the Southern Steel Company.

Mr. BENNERS. You understand these plants I mention are parts of the Southern Steel Company property. They made a great deal of money out of them.

Senator CLARKE, of Arkansas. The Southern Steel Company did, or the former owners?

Mr. BENNERS. I say Lacey & Butte sold their plants to the Southern Steel Company, which plants thereafter became a part of the property of the Southern Steel Company. They made a great deal of money out of their plants. I was familiar with the matter during their operation of them.

Senator CLARKE, of Arkansas. But not with the operations of the Southern Steel Company?

Mr. BENNERS. No, sir. I would not undertake to say whether the Southern Steel Company made or lost money. My impression is they lost it.

Senator CLARKE, of Arkansas. That is all.

Representative BURNETT. They had not sold out a very great while?

Mr. BENNERS. About two years ago.

STATEMENT OF SENATOR JOSEPH F. JOHNSTON.

Senator JOHNSTON. I think I will make a brief statement here, since I have been drawn into the controversy.

Senator CLARKE, of Arkansas. I suppose it will be satisfactory to Senator Bacon, if it is satisfactory to these gentlemen.

Representative RICHARDSON. It is perfectly satisfactory.

Senator JOHNSTON. I wish to say, as there seems to be an attempt to draw me personally into this matter, that I have never, at any time, at any place, directly or indirectly, made any request of or suggestion to Judge Hundley in regard to this receivership, or anything

connected with it, in any manner, shape, or form. I was not present in Alabama when Colonel Bush was appointed, and did not know that his name was being considered until after I saw his appointment announced in the paper. I have never at any time or place expressed my intention either to oppose or vote for the confirmation of Judge Hundley. I have said that I should not oppose his confirmation because he is a Republican, but that it would depend upon the charges and the evidence that was taken upon the hearing or presented against him.

Personally, my relations with him are friendly, but I have stated that if any cause was here shown why he was an unfit man to be judge, I felt at liberty to oppose his confirmation. I am under no pledge, promise, agreement, understanding, expressed or implied, as to my action in the premises; and I do not quite enjoy being thrust into this case unnecessarily by any intimation that I have in any manner, shape, or form taken any action to influence his conduct as judge. That is all I care to say.

Representative BURNETT. I wish to disclaim any such intention, if Senator Johnston understood that from any question I asked Mr. Bush. The statement he had made was that the receivership was unsolicited on his part, and in cross-examination of that I asked him the question, because some one had said to me that he understood that Captain Bush asked Senator Johnston to write a letter recommending his appointment. Whether Senator Johnston did or not was not stated. I desire to state here that if Captain Bush had asked me to recommend him to Judge Hundley as a suitable man for the position, knowing him as I do, I would not have hesitated to have done so, because of my knowledge of his capacity for the place. I desire to disabuse the mind of Senator Johnston, and that of any member of the committee, that I had any such idea, or that I had ever said or intimated such a thing.

Senator JOHNSTON. So far as Colonel Bush is concerned, or anyone else, I can say that no one ever made any request of me in the matter, and if they had, whilst I think Colonel Bush is one of the most capable men in the entire State to have been appointed receiver, I should have declined to give a recommendation pending the confirmation of Judge Hundley.

Representative BURNETT. I do not want the governor to misunderstand me. There was no such purpose, or intention, or thought.

Representative RICHARDSON. Colonel Bush mentioned a firm of lawyers by the name of Campbell & Johnston.

Senator JOHNSTON. I am very glad to say that that Mr. Johnston is my son, and I am very proud of the fact.

I desire to say further that I understand a very large number of members of the bar in this district have indorsed Judge Hundley; that two-thirds, nearly, of the legislature of Alabama has indorsed him; and quite the same proportion of the supreme judges in the State; and I have had, I believe, two letters opposing his confirmation, and not one from the bar of Birmingham, not one from a member of the legislature, not one from a justice of the supreme court, and if there be any change of sentiment, as indicated by Mr. Benner, on the part of the bar of Birmingham, and I think I know nearly all the members of the bar, nearly three hundred, not one of them has

confidentially, or otherwise, asked me to withdraw his name or to express any change of sentiment in regard to Judge Hundley's confirmation.

Representative RICHARDSON. Senator, in your experience as governor of Alabama you found out, did you not, how easy it was for men to sign petitions to have things done?

Senator JOHNSTON. I think that—

Representative RICHARDSON. I do not believe there has been any governor of Alabama who was disposed to pay less attention to petitions unless there was good reason for it, than you were in your administration of that great office.

Senator JOHNSTON. I paid respectful attention to every petition that was presented to me.

Representative RICHARDSON. Yes, and then acted as you pleased.

Senator JOHNSTON. I formed my own conclusions. I followed my own judgment rather than that of mere numbers.

(At 12.15 p. m. the subcommittee adjourned until Friday, February 14, 1908, at 3 o'clock p. m.)

WASHINGTON, D. C., *February 14, 1908.*

The subcommittee met at 3 o'clock p. m.

Present: Senators Dillingham (chairman), Bacon, and Clarke, of Arkansas; also Senators Bankhead, Bryan, and Johnston; also Representatives Burnett, Craig, Richardson, and Underwood.

STATEMENT OF OSCAR R. HUNDLEY.

Mr. HUNDLEY. Mr. Chairman and gentlemen, I am here to answer certain objections raised in reference to my confirmation as judge of the northern district of Alabama, and which objections have been furnished me in the shape of a letter from your chairman. I will say, gentlemen, I think without being out of the rule, probably, that these objections are the culmination of fourteen months of earnest and aggressive work on the part of my opponents, politically and otherwise, to present to the Senate every act of my life, private, political, and professional.

I deem it not improper to say that the day the President notified me that he intended to appoint me judge, which was the first communication I had ever had with him upon the subject, I told him that I challenged and invited the closest scrutiny into every act of my life, personal, private, professional, and political.

The first charge is this:

That Mr. Thompson, upon whose recommendation, it is claimed, all Federal appointments are made in Alabama, was, at the time of your appointment, under obligations to you for a loan of money, etc.

That charge is not specific or positive, of course, but is a veiled insinuation and innuendo. However, I make no point of this, but shall proceed at once to lay before the committee fully and completely my whole transaction in reference to that matter.

The idea there is that Mr. Joseph O. Thompson had the exclusive right of designating to the President my appointment as judge of

the northern district of Alabama. This is unqualifiedly false and untrue. It is but necessary for me to cite to you gentlemen the record in reference to my appointment to convince you most positively that there is absolutely nothing in that charge, so far as concerns the fact that Mr. Thompson was the only man who secured my appointment. The fact is that while Mr. Thompson indorsed me, as did the bench and bar of Alabama, for his appointment, he was but one among the many. The matter of my appointment as judge was never referred to Mr. Thompson by the President or anyone else, and outside of his mere indorsing me as the party head in my State, and also giving the sanction of his indorsement of me as a man and a citizen and a lawyer, he had no other part or parcel in my appointment.

I have with me, gentlemen, and shall file as I proceed as exhibits, the full history of how my appointment came about.

In the first place, in 1901 I first became a candidate for district attorney. Senator Morgan had communicated to me the fact that the President was going to make a change in the district attorney for the northern district of Alabama by removing Mr. William Vaughn, and suggested to me that he believed I could secure the place. I said to him: "Senator, the President turned me down for judge at the time Judge Jones was appointed, although I had a far greater indorsement than Judge Jones could possibly have had, and I do not feel, therefore, very much in the humor to ask the President to make this appointment." He replied to me in substance—I can not give his exact language—"I believe he will appoint you. I am for you, and I am going to do everything I can to secure this appointment for you."

Representative RICHARDSON. Have you a copy of his letter?

Mr. HUNDLEY. Yes, sir; I have.

Senator BACON. This was a personal interview?

Mr. HUNDLEY. Yes, sir.

Senator BACON. And then there was a letter besides?

Mr. HUNDLEY. Yes, sir. "I am going to do everything I can to secure your appointment. I recommended to the President Frank O'Brien for United States marshal, but he is your father-in-law. I understand that he is not a candidate, or would not accept the place. I want you to have this place of United States attorney." That was in his residence in the city of Washington. He said, "I will write you a letter, and you take this letter and go to the President, and talk with him about it, and then let me know what he says, and if there is anything more I can do I will do it." Here is the letter. It is not a typewritten letter. It is an autograph letter, in Senator Morgan's own handwriting. I offer this letter. I want it to go into the record.

UNITED STATES SENATE,
Washington, D. C., November 15, 1901.

MR. PRESIDENT: The name of Hon. Oscar R. Hundley, of Huntsville, Ala., is presented for appointment as district attorney for the northern district of Alabama.

In the meantime, I should have said my friends in Alabama began to get up indorsements for me, a brief of which I shall file. Among those friends interesting themselves for me was Gen. Joseph Wheeler, who was my personal friend up to the time of his death, and there are

two or three others in the file from General Wheeler. I proceed with Senator Morgan's letter:

In consequence of that fact, I am requested by Capt. Frank O'Brien to withdraw his application for appointment as marshal of that district.

There had been no formal application made by Captain O'Brien, but Senator Morgan had put in his name.

Senator DILLINGHAM. I would suggest that you read Senator Morgan's letter and then make your explanation.

Mr. HUNDLEY. All right. I will do so. The letter continues:

Captain O'Brien is the father of Mr. Hundley's wife.

Mr. Hundley is a man of ample means and a lucrative practice and has no business reason or necessity for seeking this office. He was very strongly supported by persons of both parties for the position of judge of the northern district, and those friends and others asked him to apply for the position of district attorney. When Mr. McKinley was first a candidate for the Presidency Mr. Hundley supported him. He had been a Democrat during his manhood and was honored by that party with a seat in the house of representatives of the Alabama legislature, and afterwards for eight years in the State senate.

In that body he was chairman of the committee on the judiciary and also of the Democratic caucus. Being in this attitude when Mr. McKinley was nominated it was a crucial test of Mr. Hundley's moral courage to support the Republican nominee for the Presidency, and he made announcement of his purpose, publicly and firmly. It is creditable to him and his former party associates that his new attitude created no question as to his integrity or his sincerity and, so far as I am informed, it has left no impressions that are to his disadvantage. In a subsequent race for Congress against General Wheeler he received a very large vote.

I refer to these facts in support of the recommendation I have the honor to make in favor of Mr. Hundley's appointment. But I support him not for any political reason, but because I know that the office is of great importance to the people of Alabama, and I am satisfied that he would perform its duties with ability, industry, courage, and justice, and with satisfaction to all good men. There is no question on either of these grounds as to the propriety of his appointment. The strongest recommendation he possesses is the well-deserved confidence of the people among whom he has spent his whole life.

With great respect,

JOHN T. MORGAN.

I file that as Exhibit A.

But Mr. Roosevelt changed his mind about the removal of Mr. Vaughan at that time and determined that for the present he would not remove him. But in the course of a few weeks or a month—the letter is dated November 15, 1901—in the course of a few months, eight or nine months, he determined to remove Mr. Vaughan and did remove him.

Senator Morgan at that time was at Warm Springs, Va., and he sent the President this telegram:

WARM SPRINGS, VA., *September 13, 1902.*

The PRESIDENT, *Oyster Bay, N. Y.:*

I beg to renew my recommendation of Oscar R. Hundley for district attorney of north Alabama.

JOHN T. MORGAN.

That telegram bears the impression of the Department of Justice, showing it was filed with the Department of Justice, as does the prior letter of Senator Morgan which I read. I mark this Exhibit B.

At the time I had the talk with Senator Morgan, he said to me, "I believe the President will appoint you, but there is one thing I want you to do. You can do it, and I want you to do it, because I know they want you." I said, "What is that, Senator?" He said, "I want you to get the indorsement of the supreme court of Alabama." I im-

mediately wrote to Chief Justice Thomas N. McClellan, of the supreme court of Alabama, stating to him what Senator Morgan had said to me. Judge McClellan then secured for me the indorsement of every member of the supreme court of Alabama, which indorsement is on file with the papers which were filed at that time, commending me from their knowledge of the manner—I think I can state almost the language—in which I conducted cases in that court for appointment as district attorney.

Now, coming down further, when I was appointed district attorney in 1900 by the President, I saw Senator Morgan in the reception room of the Senate Chamber. I said to him, "Senator, it is the same old story; I am here again for district attorney, but the President has appointed me." He said, "Yes, I understand it." My wife, Mrs. Hundley, was present. He said, "Well, Oscar, they are going to make a fight on you, but it is not going to amount to anything." He said, "I have been for you always, as you know. I have been your friend. I can not take any part so long as my colleague is fighting before the committee; I can not go before the committee and antagonize him, but when it comes before the Senate I will do all in my power."

The matter came on, and sometime in December—I do not remember exactly the time in December, but sometime in December, along about the first of December—I had a talk with him and said, "Senator, they are making a pretty vigorous fight on me here." He said, "Yes, I see they are." I said, "I filed a copy of that letter of yours again. I should like for you to write the committee something just to show whether or not you are for me." He said, "As I told you, I hate to do that, but I will do it. I will tell them I favor your confirmation, but I may say that I would prefer somebody else. I may do that. I do not like to take such an aggressive part in this matter." He then wrote a letter to this committee, the Judiciary Committee, and I think that letter will be found in the files.

Senator DILLINGHAM. It is here.

Mr. HUNDLEY. Let me see it, if you please. I think I have stated the substance of it.

Senator DILLINGHAM. You have stated its substance, but I will find it.

Mr. HUNDLEY. After that letter was filed, it was persistently published in the Southern press, through the Washington correspondents, that Senator Morgan and Senator Pettus had vigorously protested against my appointment. It was published in the Southern press, coming from Washington through the Washington correspondents, that the subcommittee of the United States Senate, to whom my matter was referred, had made a formal report, Senators Dillingham, Kittredge, and Pettus joining in that report, stating that they had adversed my appointment as district attorney, because from the evidence before the committee I was—I will see if I can get the language—without character or credit. That statement was published broadcast throughout the Southern press. Senators Johnston and Bankhead doubtless read it in the Birmingham papers.

I was very angry with that statement, and I came to some of my friends in the Senate. I came to a member of this committee. I said, "What shall I do? Ought I to permit slander of this sort to go forth? Is that true? Have I been published to the world as

without character and without credit?" He said, "I can not advise you about it. I do not like to advise you about it." So, when the Senate adjourned I went home.

Then I addressed to Senator Dillingham, in Vermont, his home, a letter, in which I inclosed to him a copy of this article which had been published broadcast in the Southern press. He promptly replied, stating the facts, which are matters of record, that no such adverse report had ever been adopted by the subcommittee: that there was a report; that Senator Pettus, I believe—this is the substance of it—had presented some sort of a report, but that the committee had not acted upon it.

Going back a little further, along sometime in January, I got a letter from Senator Morgan, in which he stated to me—it must be recollected that Senator Morgan was a very old man at that time—that it had been represented to him that but one Republican and one Democrat were for my nomination; that although I had no opponent, and while he had the highest regard for me and his friendship for my father-in-law was such that he felt great reluctance in opposing me, if it were true that there were but one Democrat and but one Republican who favored me——

Senator CLARKE, of Arkansas. Do you mean who were favorable to your confirmation by the Senate?

Mr. HUNDLEY. Yes, sir. It had been stated to him that but one Democrat and one Republican favored me. He had it from some one; I do not know who, of course. He had been led to believe that there were but two persons in all the world who desired my appointment as district attorney, in the face of the indorsements on file. He stated that, in view of that fact, it would probably be necessary for him to let the committee understand that he could not be understood as favoring me under those conditions, if that was true; and it had been published in the press—of course, I do not know whether it was true or not—that he had written some sort of a letter to the committee. I do not know whether he did or not. It was stated that he had written some sort of a letter to the committee based upon that idea. I thereupon wrote Senator Morgan and sent him a copy of his letter in which he transmitted the indorsement of the Huntsville bar. I thought I had a copy of it here. That letter is in the files here somewhere. It will be found by reference to the files. I suppose it is there.

Senator DILLINGHAM. Whose letter is that?

Mr. HUNDLEY. A letter from Senator Morgan, the date of which is after this other letter which he wrote in November. This is in December when I brought him the recommendation of the Huntsville bar. He wrote this letter, which I shall mark "Exhibit C."

UNITED STATES SENATE.

Washington, D. C., December 2, 1901.

MR. ATTORNEY-GENERAL:

The inclosed recommendation of Hon. Oscar R. Hundley comes from members of the bar of Huntsville, Ala., and comprises a number of the best lawyers and the best men of that bar.

It is a distinguished compliment to Mr. Hundley's character and his reputation as a lawyer. I know these gentlemen very well.

With great respect,

JOHN T. MORGAN.

Hon. P. C. KNOX.

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That was transmitting to the Attorney-General the indorsement of the Huntsville bar.

I next offer in evidence and mark "Exhibit D" a letter from Senator Morgan replying to a letter from Senator Clark, of Wyoming, asking him what he had to say in reference to my nomination. That letter is as follows:

I am not opposed to his nomination. There are others I would have preferred.

JOHN T. MORGAN.

I am doing this, gentlemen, to show that my appointment was not based on the individual request of Joseph O. Thompson, but from the bench and bar of my State.

Senator BACON. I understand you are now speaking of your appointment as district attorney?

Mr. HUNDLEY. Yes, sir. I am now speaking of the district attorneyship. I will get to the judgeship directly.

I file a brief of the indorsements requesting my appointment as district attorney, marked "Exhibit E." It contains the name of Senator Morgan, practically all of the judges in Birmingham, the judge of my circuit, Judge O. Kyle, judge of the eighth judicial circuit, the court before which I was practicing at that time; General Wheeler, ex-Governor Oates, Governor Jelks, supreme court and other judges. I will not attempt to name them all.

Brief of indorsements of Oscar R. Hundley, for district attorney, filed in 1903, showing his qualifications as a lawyer.

W. W. Crawford, president American Trust and Savings Bank, Birmingham, Ala.; Gen. Joseph Wheeler to Attorney-General United States; Gen. Joseph Wheeler to the President; D. O. Austin, sheriff Jackson County, Ala.; Mr. M. H. Smith, president Louisville and Nashville Railroad.

The supreme court of Alabama.—Hon. N. D. Denson, judge fifth judicial district, now member of supreme court; H. A. Sharpe, Jefferson city court judge, former supreme court judge; Hon. Robert F. Ligon, clerk supreme court.

Hon. William B. Jelks, governor of Alabama until January 12, 1907; Hon. John T. Morgan, United States Senator for Alabama, accompanied by indorsements of the Huntsville bar; Scottsboro bar, six members; Stevenson bar, three members; Hon. A. A. Coleman, judge of circuit court at Birmingham, Ala.; Hon. W. W. Wilkerson, judge of city court of Birmingham, Ala.; Hon. Charles A. Semm, junior judge city court of Birmingham, Ala.; Hon. O. Kyle, judge eighth judicial circuit; Hon. Phares Coleman, reporter supreme court of Alabama; Hon. Lawrence Cooper (Huntsville), president Alabama Bar Association; Hon. D. A. Greene, judge criminal court of Birmingham, Ala.; Hon. Alex Boarman, United States district judge of Louisiana; Hon. John C. Carmichael, chancellor Jefferson chancery division; J. P. Stiles, probate judge Jefferson County; Hon. W. A. Henderson, assistant general counsel Southern Railway; Hon. J. M. Faulkner, district attorney Louisville and Nashville Railroad; Hon. A. B. Andrews, first vice-president Southern Railway; Hon. Walter Evans, United States district judge of Kentucky; Hon. W. H. Simpson, chancellor Huntsville chancery division; Hon. J. A. Bilbro, judge ninth judicial district; Hon. R. C. Hunt, solicitor ninth judicial district; Hon. John F. Proctor, State solicitor Jackson County; Hon. W. C. Garrett, register in chancery, Birmingham chancery division; Hon. Alexander Troy, secretary Alabama Bar Association; Hon. M. D. Wickersham, district attorney United States, southern division; Hon. J. A. Kyle, register in chancery, Jackson chancery division.

Indorsements for United States district judge.—Gen. Joseph Wheeler, to the President; Hon. William C. Oates, ex-governor of Alabama; Hon. Charles Waller, general counsel M. C. & St. L. Railway; Hon. W. H. Harris, secretary supreme court of Alabama; Hon. E. P. Martindale, ex-judge, Indianapolis, Ind.; Hon. T. L. Sowell, auditor of the State of Alabama; Hon. J. H. Wallace, ex-member Alabama legislature; Hon. Charles S. Handley, chairman Repub-

lican executive committee; Hon. John V. Smith, president Alabama railway commission; Hon. S. M. Stewart (Huntsville), judge of probate of Madison County; Hon. R. H. Lowe, solicitor of eighth judicial district; Alabama legislature, senate and house; Hon. D. B. Booth (letter); Hon. R. P. Hobson, member of legislature from sixth district.

Indorsements of Wholesale Grocers' Association.—Hon. W. T. Lawler, judge probate of Madison County.

Representative RICHARDSON. Have you a letter from Judge Kyle?

Mr. HUNDLEY. Yes, sir; indorsing me for district attorney. That is the only letter I have ever gotten from him.

Representative RICHARDSON. When was that—1901?

Mr. HUNDLEY. Nineteen hundred and three, I think it was. Those are the letters I referred to, for district attorney. It was upon that kind of indorsements that Senator Morgan was made to believe that only one Democrat and one Republican were for me.

Now, gentlemen, coming down to my appointment for—

Senator BACON. Pardon me for a moment.

Mr. HUNDLEY. Certainly.

Senator BACON. I do not think I clearly understand what it was Senator Morgan referred to when he spoke about only one Republican and one Democrat favoring you?

Mr. HUNDLEY. That is what he said he had heard; that there were only one Republican and one Democrat who favored my appointment.

Senator BACON. Where?

Mr. HUNDLEY. Anywhere; from Alabama; that I had no indorsements. He was not alluding to any member of the Senate at all.

When the bill creating the judge of the northern district of Alabama became a law, I immediately had filed with the President various indorsements of me for district attorney as well as judge. As is well known there were twelve or fourteen candidates for the judgeship. In other words I was the conspicuous candidate whom everybody seemed to be after. They had an idea I was the man they had to beat.

The papers aggressively fought me with correspondence from Washington. I filed these indorsements, and my friends—I was in Washington at the time—continued to get up indorsements in addition to those already filed and sent them to the President. As I have said, Mr. Thompson had nothing further to do with it after he indorsed me.

Various candidates were presented to the President. Various efforts, properly so, were made to secure the appointment of some one else. I left my case to the President. I never saw the President about this matter. I never mentioned it to him.

When all the candidates were in the field, and after the Senate adjourned—the history I am now giving of this appointment is as I gather it by authority of the Attorney-General—the President called the Attorney-General to him and referred to him all the indorsements of the various candidates, and requested him to make a report thereon as to the best equipped man for the position, stating in substance—the President did not tell me this, but I got it from the history of the case, I got this from the published communications in the press—that he preferred a Republican, naturally, but he wanted a good man above all else and if he could not get a Re-

publican who was fitted, capacitated for the place, he would appoint a Democrat.

The Attorney-General then took all of the indorsements. I had never met the Attorney-General. I had never seen him. I did not go to see the Attorney-General. I permitted him to take the papers and make his own findings without any solicitation from me.

I present here now a brief of the indorsements for me for judge which were filed with the President before my appointment as judge. I mark this Exhibit F. As I have said, he had before him not only the indorsements of me for judge, but for district attorney. I left Washington and went home, and left the matter entirely in the hands of my friends.

Indorsements of Oscar R. Hundley, of Huntsville, Ala., filed with his application for appointment as United States district judge for the northern district of Alabama.

The judiciary.—Hon. Edward B. Almon, judge of the circuit court; Hon. W. H. Simpson, judge of the chancery court; Hon. W. E. Skeggs, judge of the probate court; Justice Jonathan Harralson, of the supreme court of Alabama; Hon. A. A. Coleman, judge of the circuit court (of Birmingham); Hon. H. B. Abernathy, judge of the superior court; Hon. W. T. Lawler, judge of the probate court (two letters); Hon. W. W. McCutcheon, judge of the probate court; Hon. S. L. Fuller, judge of the probate court; Hon. Dan Greene, judge of the criminal court of Birmingham; Hon. Samuel Greene, judge of the probate court (Birmingham); United States District Judge Charles Swayne; Hon. S. L. Weaver, associate judge, criminal court, Birmingham; Hon. Tancred Betts, judge, law and equity court; Hon. A. D. Sayre, judge, city court of Montgomery.

Ex-members of the judiciary.—Hon. Claude Waller, ex-circuit judge (now division counsel, Nashville, Chattanooga and St. Louis Railway); Hon. J. H. Montgomery, ex-judge of the inferior court, Birmingham; Hon. Floyd Estill, ex-judge of the circuit court (of Tennessee); Hon. B. C. Jones, ex-judge of the city court of Bessemer; Hon. John W. Inzer, ex-judge of the circuit court.

Officers of the supreme court of Alabama.—Hon. Lawrence H. Lee, supreme court reporter; Hon. Leon McCord, secretary of the supreme court; Hon. Junius M. Riggs, marshal and librarian of the supreme court.

Officers of the chancery court.—Hon. J. A. Kyle, register in chancery; Hon. A. E. Hewlett, register in chancery; Hon. J. W. Altman, register in chancery.

State officials.—Hon. William D. Jelks, governor of Alabama (at date of letter); Hon. Henry Roberts, governor of Connecticut; Hon. Curtis Guild, jr., governor of Massachusetts; Hon. Massey Wilson, attorney-general of Alabama (when letter was written); Hon. R. R. Poole, State commissioner of agriculture; Hon. E. R. McDavid, secretary of state; Hon. John McQueen, State solicitor, Tenth judicial circuit (Birmingham); Hon. J. K. Jackson, secretary to the governor of Alabama; Hon. J. H. Carmichael, State auditor; Hon. Harvey E. Jones, State tax collector; Hon. H. P. Hefflin, State solicitor, criminal court, Birmingham; Hon. R. C. Hunt, State solicitor, ninth judicial circuit; Hon. John F. Proctor, State solicitor for Jackson County; Hon. S. A. Lynne, State senator; Hon. E. E. Wallace, city clerk, Cullman, Ala.; Hon. Hugh Morrow, ex-State senator; Hon. R. T. Goodwin, member Alabama legislature; J. E. Gardner, tax collector, Madison county, Ala.

Members of the bar of Alabama.—Hon. Milton Humes, ex-president Alabama State Bar Association, Huntsville; Hon. George W. Jones, chairman executive committee Alabama State Bar Association; Hon. W. L. Clay, ex-secretary Alabama State senate, Huntsville; Hon. Thomas T. Huey, late captain, Company H, First Alabama Volunteer Infantry, Bessemer; W. F. Esslinger, esq., Huntsville; Hon. Sterling A. Wood, ex-clerk supreme court of Alabama, Birmingham; D. B. Anderson, esq., Birmingham; Z. T. Rudolph, esq., Birmingham; W. T. Hill, esq., Birmingham; W. C. Ward and W. R. Houghton, Birmingham; W. D. McCrosson, esq., Birmingham; John W. Tomlinson, esq., Birmingham; M. F. Parker, esq., Cullman; F. E. St. John, esq., Cullman; J. W. Austin, esq., Cullman; G. O. Chenault, Moulton; M. W. Howard, ex-Member of Congress, and L. P. Hunt, Fort Payne; Charles J. Dougherty, esq., Birmingham; O. D. Street, esq., Guntersville; W. S. Walsh, esq., Bessemer; C. G. Harris, esq., Decatur; Jere Murphy, city attorney of Huntsville, Ala.;

D. Isbell, Guntersville; John C. Eyster, Decatur; W. E. Fort, Birmingham; W. C. Garrett, Birmingham; Robert C. Redus, Birmingham; H. C. Selheimer, Birmingham; B. M. Allen, Birmingham; Hon. Porter Bibb, Belle Mina, Ala.

Petitions.—Bar of Scottsboro, Ala. (12 members); bar of Guntersville, Ala. (7 members); bar of Fort Payne, Ala. (8 members); bar of Jasper, Ala. (11 members); majority of the bar of Chilton County, Ala. (5 members); Right Rev. Edward P. Allen, bishop of Mobile, Ala.; ex-Governor William C. Oates, Alabama; Hon. M. H. Smith, president of Louisville and Nashville Railroad; county officials of Chilton County, Ala. (8 members); Hon. Thomas W. Smith, mayor of Huntsville, Ala.; Hon. H. C. Pollard, city clerk, Huntsville, Ala.; Hon. F. J. Thompson, chairman of Chamber of Commerce of Huntsville; Hon. A. D. Rodgers, ex-sheriff of Madison County, Ala.; Hon. J. D. Humphrey, ex-superintendent of education; Hon. Andrew W. Burgin, ex-sheriff Jefferson County, Ala.; Hon. W. E. Horne, Birmingham, Ala.; Hon. Oscar Fulgham, ex-sheriff Madison County, Ala.; W. H. Eschells, president First National Bank, Huntsville; Hon. Ben P. Hunt, editor Huntsville Daily Mercury; Hon. C. W. Hare, editor Tuskegee News; W. H. Lewis, president Bessemer Trust and Banking Company, Alabama; J. S. Carroll, president First National Bank of Troy, Ala.; Jeff Clay, president Citizens' Bank, Bessemer, Ala.; R. F. Smith, President Bessemer National Bank, Alabama; Hon. T. G. Bush, Birmingham; Walter K. McAdery, clerk circuit court, Birmingham; J. T. Glover and 7 other members of Jefferson County Bar Association, Alabama; J. E. Shelbey, president Birmingham Board of Trade; Walker Percy, attorney Tennessee Coal, Iron and Railroad Company, Birmingham; W. W. Crawford, president American Trust and Savings Bank, Birmingham; W. P. G. Harding, president First National Bank, Birmingham; Rufus N. Rhodes, editor Daily News, Birmingham; George M. Cruikshank, editor Ledger, Birmingham; Eugene Mason, president Citizens' Colored Club, Birmingham; A. L. Brooks, ex-senator tenth district, Birmingham; R. H. Pearson, attorney, Birmingham; A. W. McKinney, Methodist minister, Birmingham; Henry E. O'Grady, pastor Catholic church, Prattville, Ala.; V. H. Tulane, grocer, Montgomery, Ala.; Richard B. Kelly, attorney, Birmingham (ex-chancellor); J. O. Long, Jasper, Ala.

Mr. HUNDLEY. The next thing I heard was a telegram from Attorney-General Bonaparte to come to Washington. I came and met him for the first time. The day before my appointment he said to me, "I have examined the papers in this case, and have recommended your appointment. The President is going to appoint you. You may telephone the President from my office and he will tell you that himself."

I then went into the next room and telephoned the President. He made an appointment for me the next morning in the presence of the Cabinet.

I went there the next morning. He told me to wait a few minutes for the Attorney-General. The Attorney-General came in in a few moments and we both went in. The President simply said, "Judge Hundley, I have made up my mind to appoint you. I am going to appoint you, because I believe you are going to make a good judge. Your indorsements show that you are amply qualified and capacitated for this office. You know it would be a compliment to me for you to make the best record possible as a judge. I believe you will do it. I know you will do it. I will make the appointment." Of course I will not detail my thanks, etc.

I left and went to the hotel. It had been persistently reported in the papers that I had no backing at all up here; that my appointment was merely a political thing; that no members of the bar favored me; and it was stated here by one or two of the witnesses, either Mr. Hood or Mr. Benners, that my indorsements were all secured after I became judge, because I had powers of thunder, and they feared me, and that was the way I received my appointment.

I filed "Exhibit F," being a brief of the indorsements of me before I became judge. That brief shows 15 of the judiciary of the State of Alabama. It shows five ex-members of the judiciary; all the officers of the supreme court of Alabama; the supreme court reporter; the supreme court marshal, and the librarian of the supreme court. Among the judges is the name of one of the judges of the supreme court of Alabama. Those indorsements contain three chancery officials, registers in chancery in Alabama. That indorsement contains the recommendation of Hon. William D. Jelks, governor of Alabama at the date of the letter. He wrote the letter while governor, but his term expired before he came to act upon it. Also the indorsement of Hon. Henry Roberts, governor of Connecticut; Hon. Curtis Guild, jr., governor of Massachusetts; Hon. Massey Wilson, attorney-general of Alabama; Hon. R. R. Poole, State com- Alabama; Hon. John McQueen, State solicitor tenth judicial circuit; Hon. J. K. Jackson, secretary to the governor of Alabama; Hon. J. H. Carmichael, State auditor; Hon. Harvey E. Jones, State tax commissioner; Hon. H. P. Heflin, State solicitor, criminal court, Birmingham; Hon. R. C. Hunt, State solicitor ninth judicial circuit, the circuit in which my friend Mr. Burnett lives; Hon. John F. Proctor, State solicitor for Jackson County; Hon. S. A. Lynne, State senator; Hon. E. E. Wallace, city clerk, Cullman, Ala.; Hon. Hugh Morrow, ex-State senator; Hon. R. T. Goodwin, member of the Alabama legislature; J. E. Gardiner, tax collector, Madison County, Ala.

It also contains the names of numerous members of the bar of Alabama. I will not read all of the names. It contains petitions sent by the bar of Scottsboro, Ala., the bar of Guntersville, the bar of Fort Payne, the bar of Jasper, Ala., and a majority of the bar of Chilton County, Ala.

Then follow a miscellaneous lot of indorsements, among them the indorsement of Mr. Walker Percy, Mr. Benners's partner; Mr. Rufus N. Rhodes, editor of the Daily News, of Birmingham; Mr. George Cruikshank, editor of the Birmingham Daily Ledger; Dr. Eugene Mason, president of the Citizens' Colored Club, of Birmingham, who of their own motion, finding something had been said of the Hundley amendment, took upon themselves to adopt resolutions. Gentlemen, I will file this. You can read it for yourselves.

Representative RICHARDSON. Let me understand you. Those were indorsements given to you before you were appointed judge?

Mr. HUNDLEY. Yes, sir.

Representative RICHARDSON. You have the letters?

Mr. HUNDLEY. Yes, sir; the letters are there. This does not contain all of them. Now I will tell you why. Gentlemen, about 4 o'clock of the day I was appointed I got a telephone message from Mr. Loeb to come to the White House. I went there and met the President in his private office. He said, "Judge, I want the people of Alabama to know upon whose backing I appointed you. I have a lot of telegrams here from the judiciary of Alabama and members of the bar urging your appointment as judge. Of course I have no way of knowing whether they sent those telegrams or not, but I want to be sure. I am going to give this to the press. I want to be sure the telegrams are all genuine."

My friends from Alabama had written me sending me a list of the judges of the supreme court who had telegraphed requesting my appointment. I went over the list with the President, and I struck out the indorsements for district attorney. This Exhibit F, which I have in my hand, is a carbon copy of that list of indorsements which was made by one of the stenographers at the White House and furnished to me by Mr. Loeb at the time of my appointment. There was an error made in this list, in that Judge Kyle was placed there as having indorsed me for judge. But the name of Judge A. D. Sayre, a nephew of Senator Morgan, who had indorsed me for judge, had been left off, and Kyle's name published by mistake as having indorsed me for judge, when in fact he indorsed me only for district attorney. I mention that so as to have the record exactly right. I can not account for that, except as a mistake made in copying.

That list was published in the public press of Alabama—in the Birmingham Age-Herald and the Montgomery Advertiser.

I heard nothing more about it until a short time before Congress convened, when several members of the bar informed me—Judge Richardson is here and he can speak for himself—that Judge Richardson was writing around to members of the bar in Alabama and the judges and other people asking them whether or not they had indorsed me, stating in substance, as the letter ran, that the newspapers make so many mistakes that he was not sure but that there were some mistakes about these indorsements.

Among the people to whom he so wrote was Mr. Walker Percy, the partner of Mr. Benners. Mr. Percy came to me at my chambers in Birmingham and told me that Judge Richardson had written him that kind of a letter. He further told me the answer he had made to Judge Richardson, stating to him that he not only indorsed me for judge, but that he was very proud to do it, because I had made one of the best judges in the State, and that the bar of Birmingham was practically unanimous in their support of me.

Judge Richardson, I am informed, also wrote to Chancellor Simpson. He also wrote to Mr. Tyler Goodwin, so he informed friends of mine. Chancellor Simpson did not tell me, but he told Captain Humes, and the latter told me. I am informed that he also wrote to friends at various points in Alabama, asking whether it was true that they had indorsed me, as stated in the newspaper reports.

I mention this fact to show that my indorsements were so strong that when they were published in the newspapers they surprised my opponents, and I mention that as bearing upon the proposition that Mr. Thompson did not have me appointed.

Now, gentlemen, about that mortgage. I am going to tell you all about it. I have not the slightest thing in the world to conceal about it.

In 1906, nearly a year before the office I now hold was created, Mr. Thompson came to me and stated that he wanted to borrow some money on his wife's property in Lowndes County. He wanted to borrow \$4,500 at 8 per cent. I had the money to loan. I was glad to loan it. The mortgage is a matter of public record, where everybody can read it. The security was not only the farm he gave me, but personal security in addition thereto.

I investigated the value of that farm and found that it was worth \$15,000 at the lowest estimate. There was a prior mortgage to mine of about \$2,500; so that there was an investment of about 50 per cent of the value of the farm, and besides the other collateral.

When the mortgage became due, a short time thereafter, Mr. Thompson said to me, "I am dealing greatly in real estate; I am going to buy 18,000 acres of land from Governor Comer," or, "I am thinking about it," or something of that sort. "If you want this money I will pay it to you now. But I am negotiating with the Union Central Life Insurance Company to make a loan of \$35,000 or \$40,000 at 7 per cent, and if you are willing for this to run, I will let it run a little longer, until the loan is put through." I had no use for the money. It was bearing 8 per cent interest. I was only too glad to let it run longer. Then he paid the interest; and Mr. Thompson has made a statement, with the checks and all attached.

On May 17, 1907, the first year after the mortgage, he paid the interest, \$360. Here [exhibiting] is the check for it, which passed through the bank, with my signature on it and the bank's cancellation. Then on October 18, 1907, he paid \$1,200. Here [exhibiting] is the check with the bank's cancellation on it. He then said to me: "I have made this negotiation with the Union Central Life Insurance Company. I should like for you to deposit the papers in the bank, and they will be taken up as soon as the loan gets through." He said: "I am going to get it at 7 per cent, and I will take it up." I said: "All right." I put the papers in the bank, and when I came to the appointment of these receivers I neither thought nor cared whether Mr. Thompson owed me that balance or not. The papers had been deposited for collection. I had not kept pace with them. I did not know whether it was paid or not. I suppose my banker would have notified me when it was paid. So that is the whole of that transaction.

I now file Exhibit G, being the affidavit of Mr. Joseph O. Thompson. I will state that I should much preferred to have had Mr. Thompson remain here. He is one of the receivers, who are now preparing their final report, and in addition, he is collector of internal revenue. He stated to me that he would come back, if he possibly could, but that I knew very well the many calls upon his time. So he sends me this affidavit, duly sworn to, with these checks which I have given you as an exhibit. I will read his affidavit, and then in addition to that, there is a statement from the Union Central Life Insurance Company, showing his negotiations for that loan, long before my appointment as judge, and why the loan was not perfected, there being some little defect in the title of 47 acres, I think it was, of this property. I will not read that, but I will state what it is, and the committee can see for itself.

Senator BACON. I believe you were present when I said to Mr. Thompson that I desired him to remain until he was examined?

Mr. HUNDLEY. Yes, sir, I was; and I told him to remain. I insisted on his remaining. He then said he would go home and come back, if possible. That is true, Senator, but you understand I can not make him do it. I have no power to compel him to do it, but this is what he sends me by Mr. Sterling Wood. I have stated all the

facts I know. I have not heard from him from that day to this. Here is Mr. Thompson's statement:

STATEMENT OF HON. JOSEPH O. THOMPSON, OF BIRMINGHAM, ALA.

As it now seems impossible for me to return to Washington to appear in person at the hearing in the matter of Judge Hundley's confirmation as United States district judge for the northern district of Alabama, I make the following statement, to be filed with the committee:

I am informed that it is charged, in substance, that I borrowed \$4,500 from Judge Hundley, not in due course of business, but in payment for my political influence in his behalf. Also, that Judge Hundley appointed me one of the receivers of Southern Steel Company in further payment of political debts. The charge is not in writing, and I may mistake or understate it; but as I deny the imputation in all of its bearings I desire that my denial cover any possible insinuation or unfavorable deduction imputed by the charge which would tend to draw in question the honor or integrity of Judge Hundley or myself.

The transaction relating to the borrowing of the money and the making and filing of the mortgage securing it long antedated the passing of the act creating the office to which Hundley has been nominated. The loan was made in May, 1906, the mortgage being dated the 17th day of May, 1906, was filed for record on the 25th day of May, 1906, and duly recorded in the probate office of Lowndes County, where the land lies. This mortgage was second to a first mortgage on the same lands, which was also of record at the time of the execution of the mortgage to Judge Hundley, and was referred to in Judge Hundley's mortgage. The reasonable value of the land was \$15,000. On a basis of 6 per cent per annum return, the land was reasonably worth \$25,000, as it was paying at times 34 bales cotton rent. In addition to this mortgage I gave Judge Hundley additional security.

As the loan was bearing 8 per cent per annum, I informed Judge Hundley that I had applied to the Union Central Life Insurance Company for a ten-year loan at 7 per cent, to take up both mortgages, and he agreed to accept payment of his loan with accrued interest when the new loan should be obtained. When Judge Hundley's note and mortgage became due, the title, as abstracted, had not been entirely approved by the attorneys for the Union Central Life Insurance Company, and I paid the accrued interest, the principal being allowed to run until I closed with the Union Central Life Insurance Company. Subsequently I paid him a part of the principal. The foregoing appears from my original checks hereto attached, marked Exhibits "1" and "2," and from the letter of the insurance company hereto attached, marked "Exhibit 3." I have spoken of this loan as being made to me when, as a matter of fact, the title to this property is in my wife, Mrs. Thompson, and the loan was in her name.

Concerning my appointment as one of the receivers of the Southern Steel Company, I wish to say that the appointment was entirely unsolicited. Judge Hundley had known me intimately for several years and can with more propriety give his reasons for trusting me with a part of the management of this bankrupt estate. So far as I have heard there has been no criticism made by anyone of any act of mine as receiver, nor do I feel that any just criticism could be made.

For the further information of the committee, I think it not improper for me to say that during the last few years I have been the owner of some 12,000 acres of the best farm lands in Alabama, located in Hale, Wilcox, Macon, and Lowndes counties, besides large holdings of real estate in Jefferson County, and have also been a large borrower of money. I sold a portion of these lands and bought from Governor Comer, of Alabama, his plantation in Barbour and Russell counties, consisting of 18,772 acres. In addition to the above am interested in other businesses here.

In regard to Judge Hundley's indorsement for district judge it was never referred to the Alabama referees for them to pass upon nor did the President or attorney-general ever call upon me for an opinion or for an expression of my wishes upon the subject of his appointment. It gave me great pleasure as a citizen of Alabama to add my indorsement to that of almost all of the members of the bench and bar among whom he had lived.

I have held office in Alabama for sixteen years, and during that time have not been reprimanded or in any way criticised for any official act of mine. I was

one of the two administrators of my late brother, Congressman Charles W. Thompson, and in that capacity handled property of his estate worth about \$400,000 at the time of the closing of the administration, which was at least 25 per cent more than the value of the estate at the time I entered upon the discharge of my duties as one of the administrators.

That is to show his ability to manage large estates.

I wish nothing I have said to be thought self-laudatory. My purpose is to give a simple statement of facts and say nothing more of myself than to give the committee true information concerning the relations which existed between Judge Hundley and myself.

THE STATE OF ALABAMA,
Jefferson County:

Before me, Y. A. Dyer, a notary public in and for said State and county, this day personally appeared Joseph O. Thompson, who, after being first duly sworn, on oath doth depose and say that the statements of fact contained in the above and foregoing are true as therein stated.

JOSEPH O. THOMPSON.

Sworn to and subscribed before me on this 12th day of February, 1908.

Y. A. DYER, *Notary Public.*

Then follows the statement by the Union Central Life Insurance Company in accordance with what I stated to you, showing the negotiations for the loan, which is as follows:

ATLANTA, GA., *January 31, 1908.*

To whom it may concern:

I am financial correspondent of the Union Central Life Insurance Company, of Cincinnati, Ohio, for the States of Georgia and Alabama.

On January 4, 1907, Mr. J. O. Thompson, of Birmingham, Ala., on behalf of his wife, Annie M. Thompson, applied to me for a loan on her plantation in Lowndes County, Ala. He stated that this plantation was then covered by two mortgages of over \$4,000 each; one to W. H. Merritt, representing a balance of purchase money, and the other made to Oscar R. Hundley, of Huntsville, Ala., and that the object of the proposed loan was to pay off these two mortgages.

I sent Mr. Thompson an application blank, and Mrs. Thompson regularly applied for a loan. In her application she showed two mortgages on the plantation offered as security—a \$4,134 mortgage in favor of W. H. Merritt and a \$4,600 mortgage in favor of Oscar R. Hundley. She stated in the application that the loan was wanted for the purpose of paying off these two mortgages. Her application is now on file at the home office in Cincinnati, Ohio.

Mrs. Thompson requested our abstract attorney at Hayneville, Ala., Mr. W. P. McGaugh, to prepare an abstract of the property. It was not made promptly, and when received was in many respects unsatisfactory to counsel at home office. It required much time and considerable effort to get the title in shape where the abstract could be approved at the home office. It has just recently been approved, the loan is now ready to close, and the Union Central has sent me the final papers. I have forwarded the mortgage to Birmingham for execution, and as soon as notified by Attorney McGaugh that it has been filed for record and that nothing has intervened since his former search, I will go to Birmingham and close the loan in person, paying off above two mortgages.

Yours, truly,

ROBERT ZAHNER.

BIRMINGHAM, ALA., *May 17, 1907—No. 272.*

COMMERCIAL STATE BANK:

Pay to the order of O. R. Hundley three hundred sixty (\$360) dollars. Interest on \$4,500 note.

JOS. O. THOMPSON.

(Indorsed:) Oscar R. Hundley. Paid through clearing house May 31, 1907. American Trust and Savings Bank, Birmingham, Ala.

BIRMINGHAM, ALA., *October 18, 1907.*

COMMERCIAL STATE BANK :

Pay to the order of O. R. Hundley twelve hundred (\$1,200) dollars.

JOS. O. THOMPSON.

(Indorsed :) Oscar R. Hundley. Paid through clearing house October 21, 1907. Prior indorsements guaranteed American Trust and Savings Bank, Birmingham, Ala. Pay to order of any banker or trust company, prior indorsements guaranteed, October 19, 1907, First National Bank, Huntsville, Ala., O. S. Patton, cash.

Representative BURNETT. Do you know what taxes Mr. Thompson paid on that land?

Mr. HUNDLEY. I know nothing about his private business.

Representative BURNETT. Is not that a public matter?

Mr. HUNDLEY. I do not consider that I, as a judge, have any business running around to ascertain what people pay in the way of taxes.

Representative BURNETT. You were speaking of the value. I thought possibly you might know what taxes he paid on the property.

Mr. HUNDLEY. I do not know anything about the value except what information I got in regard to the Lowndes County property.

Representative BURNETT. You never saw it?

Mr. HUNDLEY. No sir. I got information from a man who formerly owned the property, Mr. Merritt. He published a statement when this charge was made that he would pay \$5,000 more than all the incumbrances upon it and pay it in cash, and that he would be glad to buy the property now. He published that in the Birmingham Age-Herald of his own volition, and without even saying a word to me or Mr. Thompson about it.

That is the whole of that transaction. It is a purely business matter, as I have told you—a matter of public record—and I have made a plain statement of the whole thing.

Here comes another one:

Second. That as a lawyer your practice was not sufficient to warrant your appointment and to qualify you for efficient service as a Federal judge.

It is rather a difficult matter for a lawyer to pass upon his own qualifications. All I have to say about that is that the indorsements of the bench and bar prior to my appointment have been vindicated by the indorsements of the bench and bar since my service upon the bench. It seems to me that that is a sufficient answer.

Now I shall file right in this connection as Exhibit H indorsements requesting my confirmation by the Senate. I should like to read, Mr. Chairman, if you will give me the indorsements, the wording of the petition by the bench and bar asking for my confirmation as judge. Here is the indorsement, which is signed by 98 per cent of the lawyers of my judicial district, except Judge Richardson's district, and I think about 90 per cent of the lawyers of his district. But, so far as the immediate locality is concerned, my home in Birmingham, and the district, I have 98 per cent. Of the 250 to 300 lawyers of the city of Birmingham, I have the names here of everyone but two, and those two stated just as I was leaving Birmingham that they would take great pleasure in writing me a letter if I desired it, and hoped I would be confirmed. I will read the language of this indorsement.

We, the undersigned members of the bar of Birmingham, Ala., would most respectfully petition your honorable body to promptly confirm the nomination of Hon. Oscar R. Hundley as judge of the district court of the United States

for the northern district of Alabama. We make this request based upon the fact that during his service upon the bench since his appointment Judge Hundley has demonstrated his ability and eminent fitness to fill this important office, and his prompt confirmation would, in our judgment, meet with the approval of the people of this district.

Now, gentlemen, Mr. Benners would have you believe that because I was judge and since I have been appointed judge the members of the bar down there, because they had cases before me, signed my petition, and he states that my father-in-law, Capt. Frank O'Brien, carried it around, and by that means they were sort of intimidated.

Now, gentlemen, I want to ask these gentlemen who are opposing me, do they believe that of the ten or twelve judges in the city of Birmingham any one was intimidated because my father-in-law carried around the petition for me? Is there any inducement that I could make to those judges to make them indorse me? They have written individual letters, and many of the judges have signed this same petition. Among those is Judge D. W. Speak, in Judge Richardson's circuit, and among the lawyers' indorsements is Mr. Harrison Heflin, the solicitor in Birmingham, and the brother of Congressman Heflin. He stated to me just on my leaving Birmingham—he took me by the hand, sought me out, and said: "I hope you will be confirmed. I indorsed you, and I will write you another letter, if you need it."

Gentlemen, could any inducement by me cause Judge Tyson to write the following letter—the Chief Justice of the State of Alabama:

SUPREME COURT OF ALABAMA,
CONSULTATION ROOM,
Montgomery, October 8, 1907.

THE PRESIDING OFFICER AND MEMBERS OF THE SENATE OF THE UNITED STATES:

Hon. Oscar R. Hundley, recently appointed judge of the district court of the United States for the northern district of Alabama, was for several years prior to his appointment a member of the bar of this court and practiced before it. His demeanor on all occasions was that of a gentleman and in accord with the highest ethics of his profession. He was regarded as an industrious, painstaking, and capable lawyer. Since his promotion to the bench I am reliably informed that he has discharged its duties with becoming dignity, fidelity, and ability.

Respectfully,

JNO. R. TYSON,
Chief Justice.

He is the chief justice of my State. Following that are letters of other members of the supreme court:

SUPREME COURT OF ALABAMA,
CONSULTATION ROOM,
Montgomery, November 15, 1907.

THE PRESIDING OFFICER AND MEMBERS OF THE UNITED STATES SENATE,
Washington, D. C.:

I have known Judge Hundley many years, and from my knowledge of his character and ability I commend him to your favorable consideration, and recommend his confirmation.

Respectfully,

N. D. DENSON.

I concur in what Judge Denson has said.

J. R. DOWDELL.

I heartily concur in the foregoing statement and recommendation of Judge Denson.

R. F. SIGON,
Clerk Supreme Court of Alabama.

It is useless for me to take up your time with many of these letters from the judiciary of my State or of my judicial district, containing, as I say the list does, every judge in the district, except probably one or two, and those one or two I have not seen and have not requested to sign; it is just simply because I have not seen them or requested them to do it. There may be two. So I say I will not take up your time by reading it. This brief, which I have filed, will show on its face. It was printed in the newspapers, and I pasted it on this sheet. It was taken from the Birmingham Age-Herald.

As long as I have to defend my career as a lawyer, I had better tell you how I have acted as a lawyer. I hope I am not wearying the committee, but this is one of the points which has been made, and I want to meet this criticism.

I graduated at law from the Vanderbilt University, and with distinction, taking one of the first honors in my class, in 1877. My father gave me the advantages of an education. While he was a man of some means, he was not a very wealthy man, but a man of wealth in our country. I was an only child. He said to me: "I do not intend to give you one farthing; you can board at my house, but you must make your way in the world." I started out, and in my early life—since the fine-tooth comb has been scraping me from infancy up—I became a little dissipated. I played poker occasionally. Twenty-seven years ago I was indicted in the court of Judge William Richardson for gambling at cards. I was convicted. I understand that is filed here. The game for which I was indicted and convicted in Judge Richardson's court was a game to which I was invited, in the law office of Nicholas Davis, first cousin of Judge Richardson, at that time county solicitor. I was the only man in the game who was indicted. The reason of that was because I had been instrumental in defeating Judge Richardson's uncle, Jeff Davis, for mayor of Huntsville, and had defeated Nick Davis for city attorney. That is a matter of public history in Alabama. I have editorial comments with me if necessary, but I will not take up the time of the committee to read them.

I started wrong. But my father was a firm and determined man. He said to me: "I will not make you suffer. You can board at my house, but you have got to change your ways." I made up my mind that I must make my way in the world. I commenced from that time, after this indictment, to apply myself, and up to that time, until my father died, about four or five years ago, I have never had one penny from my father, but I had accumulated what is regarded as a small fortune in our country by my profession and my profession alone. My father died and left me all of his estate, stating to me on his deathbed that he was proud of the career I had made.

Of recent years I have had very little general practice in the courts, simply because Huntsville is a small inland town, and as a man who is independent and who is division counsel for a great railroad system, I had all the practice I wanted, and I declined numerous cases, small cases, turning them over to Mr. William F. Esslinger and Mr. Tancred Betts, who is now upon the bench, they having an office next door to me.

Twenty-three years ago I was made local counsel for the Nashville, Chattanooga and St. Louis Railway Company. I held that position

about seven years. Then the board of directors met and created the office of division counsel for Alabama, and I was elected division counsel and have held that place ever since. How well I discharged my trust is testified to by Hon. Claude Waller, general counsel of the Nashville, Chattanooga and St. Louis Railway Company, in a letter addressed to the President asking my appointment. I believe that is about my career as a lawyer. I have had a great many important cases and I have had some very unimportant cases. It is needless for me to take up your time to call your attention to the various cases that I have had. I will not do that. That is my answer to that.

I will now proceed to the next charge.

Third. That you, in your printed letter of January 16, 1907, addressed to the chairman of the Senate Committee on the Judiciary, suppressed what is claimed to be a fact, that at the session of the Alabama legislature of 1890-91 you introduced a resolution to amend the constitution of that State, which resolution contained a proviso in precisely the same terms of the proviso introduced by Mr. Pettus at the session of 1888-89, and that in your statement of your action at the session of 1892-93, you omitted to state that at the session of 1891-92 you had introduced the resolution before named; that in omitting to mention your record at the session of 1891-92, and in the representation of your action in 1892-93, you intended to mislead the committee as to your real intention and purpose. It was further charged that the phrase used by you in 1892-93, "may by law be applied," did not differ in legal effect from the phrase used in the Pettus amendment, "shall be applied," and that you were aware of that fact.

I have heard that charge, that I deliberately deceived the committee and that I knew the words, "may by law be applied," meant the same as "shall be applied;" and after the President appointed me I went to the Attorney-General's office and saw all these charges made against me, and that was among them. This is the first time I have been officially advised of the charges against me by this committee. I published that pamphlet as an answer to the charge that has been made against me. The charge was that I proposed an amendment taking from the negroes all the money derived from taxation except that which they paid as taxes, thereby virtually depriving the negro race in Alabama of the means of securing schooling, because the negroes pay very little taxes.

Senator DILLINGHAM. That is from local taxation?

Mr. HUNDLEY. No; I am stating it just as the charge was made at the time. I will get to that part after a while. Mr. Loeb telephoned me to come to the White House. Here is the charge as originally made. I had learned that was the charge, and here is the charge as originally made, on White House paper, with a memorandum sent to the White House:

It is stated that there is some opposition to the confirmation of Mr. Hundley on account of his actions when he was a member of the legislature, in advocating an amendment to the constitution providing that moneys collected from the white taxpayers should be used in the education of white children only, and that moneys collected from the colored people should be used for the colored schools, virtually throwing the colored children out of all school facilities, as the amount of taxes collected from colored people is very small.

The charge there was that my amendment took from the colored people absolutely every vestige of revenue except that which they themselves paid. I found in a letter from Judge Richardson, written to the President just before my appointment, that that charge was *reiterated almost in totidem verbis*, as here stated. So the charge I

was called upon to answer at that time was that I had taken from the colored children all the money except that which the colored people paid as taxes.

In reply to that I wrote the President a letter, sending him a copy of this pamphlet which I filed with the committee, and I also answered the next one. I answered it by saying that this did not interfere with the general appropriation, which was under article 13, section 1, of the constitution, but was an additional appropriation to that already made by the constitution, which was required by the terms of the constitution to be divided equally among the white and colored people.

I found on going to the Attorney-General's office letters from various parties denying most positively that I ever proposed an amendment that did not have that in it; that every amendment I proposed had that in it.

Representative RICHARDSON. Do you recall who made that charge, that you had never introduced an amendment that did not have that phrase in it?

Mr. HUNDLEY. I am going to read it here now, in the printed pamphlet which I filed with the Attorney-General with the papers in the case. There may be one here. I do not know. It is not signed, but it is filed with the papers. There it is. Now, this paper contains the amendment as introduced by me in 1890-91 and has this note:

The above is the first amendment offered by Oscar R. Hundley—

As it is printed here—

to the constitution of Alabama, which discriminated against the negro.

I do not know who filed it. I found it there in print.

I am not going to attempt to answer the colored individual who appeared before you the other day, but I found a document there, and on reading his testimony I find that there was a question asked by Senator Dillingham. I think I can repeat the question:

Do you say that Judge Hundley did not offer the bill without the Pettus proviso to it in 1888?

I think his answer was—

I do. If I am mistaken in that, I am mistaken in everything.

Or something like that. And in a written communication to the Judiciary Committee I also find that he states, and someone else—Stratton, I think—cites the page of the journal, page 45, and says this was not introduced by Mr. Hundley at all, but was introduced by Mr. Henderson. He actually cites the page in his communication. I have brought the record here. This record is filed and marked "Exhibit I," pages 44 and 45.

Senator DILLINGHAM. Of what?

Mr. HUNDLEY. The journal of the Alabama legislature of 1888-9. I quote from the very page as cited in the communication, on page 44. You will notice at the beginning House bill 38. These bills were introduced by Mr. Hundley. That is at the heading of it. You gentlemen of course are familiar with legislative records. Then there follow "Also," "Also," "Also," "Also," etc., until it gets lower down, showing all the bills I introduced on that day, and it says:

H. J. R. 1. Proposing amendment to section 2 of Article XI of the constitution of the State of Alabama.

Then, gentlemen. I call your attention to page 177 of this record, where it is shown that the Pettus amendment was tacked onto my original bill.

Mr. Pettus offered the following amendment:

Add to the end of section 1 the following: "*Provided*, That the money collected from persons of the white race shall be applied exclusively to the education of children of the white race and the money collected from persons of the black race shall be applied exclusively to the education of the children of the black race."

I have marked it in blue pencil in the journal. That shows that I offered it without that amendment on it, and that Mr. Pettus, the son of Senator Pettus, put the amendment on it; that he proposed the amendment. So much for that record, showing that my statement thus far is absolutely true.

Senator DILLINGHAM. Judge Hundley, I wish you would state what your amendment was for. Do I understand that it was to aid out the State fund by local taxation?

Mr. HUNDLEY. Yes, sir; by local taxation.

Senator DILLINGHAM. What was the purpose?

Mr. HUNDLEY. To aid the State fund by local taxation.

Senator BRYAN. Have you the amendment here?

Mr. HUNDLEY. The amendment is in evidence as originally passed and it is in my pamphlet as I originally introduced it.

Representative RICHARDSON. You do not contend that the amendment by Pettus looked to local taxation?

Mr. HUNDLEY. His amendment was to my resolution.

Representative RICHARDSON. I understand. That made the negroes rely entirely on the taxes paid by the negroes for the education of the negroes, and the white people were really—

Mr. HUNDLEY. No, sir.

Representative RICHARDSON. Did not the Pettus amendment do that?

Mr. HUNDLEY. Only as far as this additional proviso went.

Representative BURNETT. Was that tax to be levied by the counties or the townships?

Mr. HUNDLEY. By the school districts.

I have not the constitution here with me. Under article 13—and I presume every Alabama lawyer knows it—of section 1 of the constitution, there is, under the general subject of education, this provision:

Appropriations shall be made by the legislature for the education of the school children of Alabama, to be divided equally among all the children.

That is under the chapter devoted to education. That is the article under which the general appropriations for school purposes are made. There is another section which did not apply to education at all, but applied only to local taxation for any purpose. Alabama in the old days made large appropriations for railroads, and it ran the State greatly in debt. Every public man is familiar with that. It had to be compromised. The new constitution of 1875 contained a provision that there should be no tax for local improvements—in just so many words; for local improvements. So before I could get an additional amount of money to be used for purposes of education to supplement the general fund, I had to amend that clause of the constitution prohibiting local taxation for any purposes. So I placed in there that

clause, the purpose of which was to permit the school trustees to levy a special tax for school purposes in that immediate locality and no where else.

Senator BRYAN. To be applicable to colored and white children?

Mr. HUNDLEY. That was my original proposition, but it was amended by Pettus. I will explain why it was amended. In order to get local taxation for public schools, it was absolutely necessary for me to assent to this. I know this was well understood by Members of Congress from Alabama and the Senators as well. In the district I represented there were a majority of white people. In what is known as the black belt of Alabama there are eight negroes to one, and when this matter came before the legislature of Alabama the objection was made that inasmuch as the legislature was appropriating under the general clause of the constitution referring to education, liberal appropriations for the education of colored children as well as white children, they did not think that in those portions of the State where the negro greatly predominated there should be an additional tax upon the white people, by which the negroes would get three-fourths of the benefits, or four-fifths of the benefits. It was that sentiment which made me soon see that it was utterly futile to try to get through the amendment without submitting to that provision. So in order that those portions of the State which were willing to tax without the discrimination might do so, I finally secured the passage of the bill in its present form by saying "may by law be so appropriated."

They said I did not disclose to the committee that in 1890-91 I introduced a bill with the Pettus amendment on it—"shall be applied." I alluded to that on the 5th day of March. As soon as I heard that this charge was made against me I wrote the President a letter, in which I referred him to page 4 of my pamphlet, in which reference was indirectly made to the fact of the difficulty of securing this amendment without the Pettus amendment; and this is the language to which I referred:

After my election to the Alabama senate, I renewed my fight in the interest of local taxation for school funds, but finding a prevailing sentiment against the measure as originally proposed by me, unless accompanied by the Pettus amendment, I introduced and secured the passage of the joint resolution, in its present shape, by unanimous vote of the senate.

Of course, gentlemen, as I stated, I voted for the Pettus amendment, because if I could not get any more, I was willing to take that.

I have simply shown the way in which I first introduced the bill, and the result, as I finally secured it upon its passage, and which is now in the archives of the State, as finally put before the people. My first answer to the charges made, and all I attempted to set out therein, was the measure as I introduced it, showing I was not the original author of the discriminatory clause, but that Mr. Pettus was the author of the discriminatory clause, and the manner in which I finally secured it, which was the best I could do under the circumstances.

So I say, on the 5th day of last March I called the President's attention in a letter to that status of it. It never struck me that it was necessary to say to the committee that I introduced it with that amendment in 1890-91, which failed to pass it, and then in 1892-93,

which failed to pass it, but simply how I originally proposed it, and how it finally became a law.

Now, with reference to "may" and "must," I have here now a brief upon the subject of "may" and "must," and in this article are cited two Alabama decisions, in which the supreme court of Alabama held that "may" means "must:" and if you will read those decisions you will find they left out in the decision a most material word. The supreme court of Alabama, gentlemen, as other courts, have held that in cases where the public has an interest *de jure*—they left out the words "*de jure*"—in order to properly construe the statute "may" will be construed as "must." Here are those cases. One of them is where the general assembly passed a law which said under the old constitution, way back in 30 Alabama, where they had a right to levy local taxes.

Boards of revenue may levy a tax for the purpose of building roads, bridges, etc.

Then when the board of revenue goes ahead and the general public understands that they have a power, or they may in their discretion levy this tax, when they go ahead and create a debt under the influence of that statute, and then decline to levy the tax to pay the debt which has been created under the influence of the statute, the supreme court says in cases like that "may" means "must," and a mandamus will lie to compel them to levy the tax. So in cases of condemnation for rights of way. In one case the statute was that a jury must be summoned, who alone shall pass upon the value of the land condemned, and the judge of probate may decide all other questions of law. As a matter of course, in a case like that the supreme court has held that a judge of probate must decide all matters of law, because that act would be futile and nothing would be accomplished except the verdict of the jury and no judgment of the court carrying out the verdict of the jury.

But I have a brief here upon "may" and "must." I may be an incompetent lawyer, and I may be an incompetent judge, but I want to say that I do not know any such law as that, and I am not familiar with any decision by any court which holds that when the Constitution leaves the discretionary power with the general assembly to pass a law that that general assembly must pass that law and must pass it in a particular way. I did not know any such thing, and I do not know it now, and I most positively assert that that is not the law; that "may" never means "must;" that language is to be interpreted by the courts in accordance with its natural intent, except in cases where the public has a right *de jure* and where it is necessary to protect those rights *de jure* the courts have gone so far as to say that "may" means "must."

Senator BACON. I should like to get the history of that exactly. There has been a great deal of confusion in my mind about the introduction of those resolutions. Let me see if I understand you correctly now. I want to see if I am correct in what I gather from your statement. You first introduced the resolution in 1888?

Mr. HUNDLEY. Yes, sir.

Senator BACON. In it there was no provision of that kind at all?

Mr. HUNDLEY. Not at all. It was not my original idea at all.

Senator BACON. You then introduced it at a subsequent session?

Mr. HUNDLEY. Yes, sir.

Senator BACON. What session?

Mr. HUNDLEY. Eighteen ninety-ninety-one, because, as I stated in my pamphlet, the sentiment——

Senator BACON. I am not talking about the reason. I am trying to get the facts.

Mr. HUNDLEY. That is the fact.

Senator BACON. You introduced then a resolution which contained the provision, but with the word "may?"

Mr. HUNDLEY. No, sir; with the word "shall," because at that time——

Senator BACON. I am not asking about the reason. I want to get the facts. You have given the reasons at length.

Mr. HUNDLEY. Yes.

Senator BACON. It is not necessary to repeat the reasons. You have already given them in extenso. All I want to do is to understand the facts.

Mr. HUNDLEY. I introduced it in 1890-1 with the word "shall."

Senator BACON. And you again introduced it when?

Mr. HUNDLEY. In 1892-3.

Senator BACON. Each time with the word "shall?"

Mr. HUNDLEY. Yes, sir.

Senator BACON. The word "may" only occurred in the original Pettus amendment?

Mr. HUNDLEY. No, sir; it never did.

Senator BACON. Where did it occur?

Mr. HUNDLEY. I introduced it a third time with the word "shall" in it. Every time I introduced that bill after Pettus stuck his amendment on it to start with I put "shall" in it. But when it got before the committee I got the committee to amend it by using, instead of the word "shall," the words "may by law," and secured the passage of it.

Senator BACON. That was the final action?

Mr. HUNDLEY. That was the final action.

Senator BACON. That is what I did not understand, where the word "may" came in.

Mr. HUNDLEY. That is where it came in.

Senator BACON. When you introduced it each time it had the word "shall?"

Mr. HUNDLEY. Yes, sir. I was the author of the words "may by law," getting the committee to put them in, pending its passage.

Senator BACON. What committee was that?

Mr. HUNDLEY. The committee on the judiciary. I was a member of the judiciary committee.

Representative BURNETT. The senate judiciary committee?

Mr. HUNDLEY. I think so. That is my recollection about it. I may have introduced it the last time with the words "may by law," though my impression is that I secured that by way of amendment in the committee instead of introducing it directly; that I wrote it "shall be applied."

Senator BACON. What became of the bill the second time you introduced it?

Mr. HUNDLEY. It was defeated.

Senator BACON. With the word "shall" in it?

Mr. HUNDLEY. Yes, sir; and it was defeated the third time.

Senator BACON. Defeated a third time?

Mr. HUNDLEY. The third time. I think it was 1892-3. I think that is the history of it.

Senator BACON. It never was adopted?

Mr. HUNDLEY. With the word "shall?"

Senator BACON. Yes.

Mr. HUNDLEY. It was adopted with the word "may," but never with "shall."

Senator BACON. Was it introduced four times?

Mr. HUNDLEY. Yes, sir; I think it was introduced four times.

Senator BACON. It was defeated three times and finally passed with the word "may."

Mr. HUNDLEY. Yes, sir; that is right.

Representative RICHARDSON. In connection with Senator Bacon's question—

Senator CLARKE, of Arkansas. Wait a moment, if you please. What do you mean by "passed?" Do you mean adopted by the people and made a part of the constitution, or do you mean passed the legislature?

Senator BACON. I was speaking of the legislative action. I do not know what the issue was. I was not making an issue on the subject, but I wanted to get the facts.

Senator CLARKE, of Arkansas. It was submitted three times.

Representative BURNETT. What do you mean by being defeated?

Mr. HUNDLEY. All I mean by passing is the legislative act. It was defeated before the people.

Senator BACON. I had reference to the legislative act.

Representative RICHARDSON. I desire to call your attention to this point in connection with what Senator Bacon has been asking you. In your letter to Senator Clarke, the chairman of the committee, you say:

I direct your attention especially—

Mr. HUNDLEY. What page?

Representative RICHARDSON. Page 4.

I direct your attention especially to the marked difference in the wording of the "proviso" as originally proposed by Mr. Pettus in the house, and that of the "proviso" of the bill as it finally passed.

Mr. HUNDLEY. That is right.

Representative RICHARDSON. Did the first resolution you introduced use the word "may?"

Mr. HUNDLEY. No. I did not introduce it with anything of that kind in it the first time.

Representative RICHARDSON. Is not that the first time you used the word "may" in the joint resolution?

Mr. HUNDLEY. That is the fact—when it passed. That is correct.

Senator BACON. Had it appeared the first time with the word "shall?"

Mr. HUNDLEY. Three times with the word "shall," but the third time I got an amendment so as to include the words "may by law."

Senator BACON. In the final stage?

Mr. HUNDLEY. Yes, sir. I favored it with "shall" in it rather than not at all.

At the same time that the President, through his secretary, furnished me with this memorandum, there was another charge made against me:

It is also claimed that Mr. Hundley was elected as a Democrat to the Alabama legislature and was to support Mr. Pettus for the Senatorship, but failed to support him.

I mention this now because that was the charge made against me then, and it might be made against me after I leave. I want to cover anything anyone wants to ask me about. Senator Pettus was very aggressively opposing me, and it was charged that I was elected as a Democrat, and then went to the legislature and refused to support Senator Pettus, and that I was expected to support Senator Pettus. I replied to that in a letter to the President, in which I cited the time I was elected to the senate and the time Senator Pettus was elected. I was elected two years before Senator Pettus became a candidate. I call attention to that fact, and that can be borne out by the records of Alabama. I was elected two years before he became a candidate, and consequently I was not instructed, nor was Senator Pettus's candidacy thought of. When Senator Pettus's election came on, there was a caucus among the Democrats, and they nominated Senator Pettus in the caucus, there being several candidates besides, among them ex-Governor Oates. If there are any other questions about that matter I will take pleasure in answering them.

Representative RICHARDSON. Who made such a charge?

Mr. HUNDLEY. I do not know. It was given to me. Others talked it around.

Senator BACON. I have never heard that charge.

Senator CLARKE, of Arkansas. Did you attend the Democratic caucus.

Mr. HUNDLEY. No, sir. I attended the Republican caucus and voted for a Republican.

Representative RICHARDSON. You were elected as a Democrat?

Mr. HUNDLEY. Yes, sir; two years before.

Representative BURNETT. You were the Democratic nominee?

Mr. HUNDLEY. Yes, sir. I have never denied that. I am not ashamed of it.

Representative BURNETT. I did not ask for that. You did not resign?

Mr. HUNDLEY. No, sir.

Representative BURNETT. It was demanded in a Democratic convention that you should resign?

Mr. HUNDLEY. I will get to that. I have no objection on earth to going into that. You can bring all that out, so far as I am concerned.

Representative BURNETT. That is a fact?

Mr. HUNDLEY. Yes, sir. They passed some sort of resolutions. I do not remember now what they were. It has been ten years ago. If you want to hear me on that I will take pleasure in going into it, and I will say that I have given my reasons and I will tell you what those reasons are.

Senator CLARKE, of Arkansas. That will have to be disposed of sometime and you might as well take it up now.

Mr. HUNDLEY. That is not one of the charges here. But I do not hesitate to answer any charge.

Representative RICHARDSON. I do not propose to interrupt you now, but I will ask you some questions about it after you get through.

Senator CLARKE, of Arkansas. Let us dispose of that now. We will adjourn before we get to the receivership matter anyway and we might as well dispose of that particular question now.

Representative RICHARDSON. What question?

Mr. HUNDLEY. About my having been elected two years before for four years as a Democrat and finishing out the term as a Republican.

Representative RICHARDSON. There was a paper filed here yesterday giving the whole history of the transaction. If you want to be examined on that now I will proceed.

Mr. HUNDLEY. Any time. I have no objection.

Representative RICHARDSON. How many times were you elected to the Alabama legislature?

Mr. HUNDLEY. Twice to the house and twice to the senate. I served four years in the house, the house term being two years, and eight years in the senate.

Representative RICHARDSON. What was the last time you served in the senate when elected as a Democrat?

Mr. HUNDLEY. In 1892 or 1894.

Representative BURNETT. The senatorial term is four years?

Mr. HUNDLEY. Yes, sir.

Representative RICHARDSON. Can you not state when you were last elected?

Mr. HUNDLEY. I think it was 1892. It may have been in 1894. The last term I served there was in 1896.

Representative RICHARDSON. You became a Republican in 1896?

Mr. HUNDLEY. Yes, sir; I did.

Representative RICHARDSON. You were invited by a large number of the people of Madison County, which constitutes the senatorial district, to resign?

Mr. HUNDLEY. I do not know about a large number. I think there was a resolution passed by a convention. If you have it there, you may introduce it.

Representative RICHARDSON. You refused to resign?

Mr. HUNDLEY. Yes, sir; and I gave those reasons in a communication to the public press. The reason was that I had been elected by the joint votes of Republicans and Democrats and I stated that I believed my course was approved by my constituents.

Representative RICHARDSON. You were nominated by a Democratic convention?

Mr. HUNDLEY. Yes, sir; and elected by both Republicans and Democrats.

Representative RICHARDSON. But the Democratic party prevailed in Madison County very largely, did it not?

Mr. HUNDLEY. Yes, sir. If you want to enter into that, that is rather—

Representative RICHARDSON. I asked you that question. Whether the Democratic party did not prevail in that county when you accepted the nomination from the Democratic party?

Mr. HUNDLEY. Yes, sir; it prevailed.

Representative RICHARDSON. If you had been nominated as a Republican, do you not know that you could not have been elected?

Mr. HUNDLEY. I do not suppose I could have been.

Representative RICHARDSON. So it was a Democratic matter?

Mr. HUNDLEY. Yes, sir; when I was first nominated, that was.

Representative RICHARDSON. You were invited to resign?

Mr. HUNDLEY. Yes, sir.

Representative RICHARDSON. The only reason, as you say to the committee, why you did not resign was that you were elected by both Republicans and Democrats; that some Republicans voted for you as well as Democrats.

Mr. HUNDLEY. No, sir; my recollection is that there was no opposition to me; that the Republicans did not put up anybody against me. I think there was a Populist running, and I got Democratic and Republican votes. That is my recollection about it. It has been some time ago. I am giving you the best I know about it. That is not one of the charges I was called upon to answer, although I do not hesitate to answer it. It was ten or twelve years ago.

Representative RICHARDSON. I read for your information the following—

Senator DILLINGHAM. Do you intend to file that?

Representative RICHARDSON. It has already been filed. I read it so as to refresh the witness's memory.

Mr. HUNDLEY. From what are you reading?

Representative RICHARDSON. An affidavit. It is as follows:

STATE OF ALABAMA, *Madison County*:

Before me, Henry B. Roper, clerk of the circuit court of said county, personally appeared W. F. Garth, who, being first duly sworn, deposes and says:

That he is a resident and citizen of Madison County, Ala., and has been practically all of his life; that he has read the proceedings of the convention of the Democratic party of Madison County, as contained in a copy of the Huntsville Weekly Mercury of date August 26, 1896, which paper is attached to this affidavit; that affiant was present at said convention and participated in the said proceedings thereof; and that said proceedings as set forth in said copy of said Huntsville Weekly Mercury is a correct report of what occurred at said meeting, to affiant's own personal knowledge; that there were other gentlemen present at said meeting, among whom were W. T. Cooper, who offered the resolution in regard to Senator Hundley, which is set forth in said paper. And affiant further states that said resolution is correctly reported in said paper.

W. F. GARTH.

Sworn to and subscribed before me this 4th day of February, 1908. In witness whereof I hereunto set my hand and official seal, being the seal of said circuit court.

H. B. ROPER,

Clerk Circuit Court of Madison County, Ala.

I read another one from W. T. Cooper.

Mr. HUNDLEY. Is it for the purpose of authenticating the proceedings?

Representative RICHARDSON. Yes.

Mr. HUNDLEY. It is not necessary to read that. Just produce the paper.

Representative RICHARDSON. I want to refresh your memory.

THE STATE OF ALABAMA, *Madison County*:

Before me, H. B. Roper, clerk circuit court in and for said county and State, personally appeared W. T. Cooper, who, being by me first duly sworn, deposes and says:

That he is a resident and citizen of Madison County, Ala., and has been for ten years next preceding the making of this affidavit; that he has read the account of the proceedings of the Democratic convention of Madison County, of which he was a member, as contained in a copy of the Huntsville Weekly

Mercury of date August 26, 1896, which is hereto attached, and that said report is correct; and that this affiant was a member of said convention and offered the resolution which is set forth in said proceedings in said paper in regard to Senator Hundley; and that said resolution is correctly and properly stated in said paper and the entire proceedings are correctly reported to affiant's own personal knowledge, he being present in said convention and hearing the entire proceedings.

W. T. COOPER.

Sworn to and subscribed before me this 4th day of February, 1908. In witness whereof I have hereto set my hand and affixed my official seal.

H. B. ROPER,
Circuit Court Clerk.

I have the resolution.

Mr. HUNDLEY. Is that the newspaper publication of it?

Representative RICHARDSON. I have the publication they refer to.

Mr. HUNDLEY. Have you not the proceedings of the convention?

Representative RICHARDSON. Yes, the proceedings of the convention.

Mr. HUNDLEY. That is what I want.

Representative RICHARDSON (reading):

County convention—

Senator CLARKE, of Arkansas. What do you read from?

Representative RICHARDSON. Senator, I read from the Weekly Mercury, Huntsville, Ala., Wednesday, August 23, 1896. I will only read the resolution that was passed by that Democratic convention.

Senator CLARKE, of Arkansas. What sort of a convention was it?

Mr. HUNDLEY. A county convention.

Representative RICHARDSON. Madison County constitutes a senatorial district.

Senator CLARKE, of Arkansas. Was it a convention made up of delegates from the several voting precincts in that district?

Representative RICHARDSON. Yes.

Mr. HUNDLEY. Two years after I was elected.

Representative RICHARDSON. I will read the resolution.

Whereas it is the duty of every American citizen to raise his voice in behalf of a cause that is just and right; whereas it is the duty, right, and honor of every American citizen to endeavor to express the wishes of the people; and whereas the Hon. O. R. Hundley has proven himself to be a wolf in sheep's clothing, and whereas the said senator has proven a Benedict Arnold to the cause of Democracy; whereas he has proven himself to be a Scipio to throw a bombshell of protection in the face of the people that have so triumphantly elected him in the past, and as we deem it a patriotic step to show our indignation in terms immeasurable: Therefore be it

Resolved, That this convention request Senator Hundley to resign his seat as senator from Madison County forthwith and immediately.

You heard of that resolution?

Mr. HUNDLEY. How was it communicated to me? Does it not state?

Representative RICHARDSON. You heard of that resolution?

Mr. HUNDLEY. Yes; I heard of it.

Representative RICHARDSON. You got all kinds of notices?

Mr. HUNDLEY. No, sir. This is the only one I ever got.

Representative RICHARDSON. It is published in a printed paper.

Mr. HUNDLEY. This is a part of that campaign.

Representative RICHARDSON. Your letter is in there.

Senator CLARKE, of Arkansas. Who wrote that resolution?

Representative RICHARDSON. I do not know. I was not in the convention at all. I am going to file this.

Mr. HUNDLEY. Yes; file it. Is my letter in answer to that in there?

Representative RICHARDSON. Yes; it is in there.

Senator CLARKE, of Arkansas. Find it, Judge Hundley, and read it.

Representative RICHARDSON. I brought the whole paper here.

Mr. HUNDLEY. Can I read it now?

Mr. RICHARDSON. If you choose.

Mr. HUNDLEY. The heading is given by the editor of the paper.

HUNDLEY'S REPLY—HE ATTACKS THE DEMOCRACY OF THE COMMITTEE—SAYS HE WILL NOT RESIGN; THAT THE PEOPLE AND NOT THE DEMOCRATIC PARTY ELECTED HIM—DENIES THAT THE CONVENTION WAS DEMOCRATIC.

To the members of the late Democratic convention, wherever they may be found:

They sent me this resolution by the secretary, R. P. Whitman. It was adopted just before the convention adjourned, and before they could get a chance to hear from me they adjourned. They did not wait for my reply.

GENTLEMEN: The city press conveys to me the fact that at your convention in this city on the 22d, "armed with a little brief authority," you assumed to demand my resignation as senator from this district. While this demand is accompanied by a "whereas" which is clothed in language neither courteous nor parliamentary, you were, of course, aware at the time of its adoption that you were entirely safe in going to any extreme in denouncing me, and could choose your language without fear of molestation or reply, for it was all accomplished in my absence, without according me the common right of being heard in my own defense. You instructed your secretary to inform me of your action, and yet you adjourned before I was notified, thus depriving me of the opportunity of reply; hence I am compelled to address you as above set forth. The spirit of revolution, injustice, and intolerance which prompted you to adopt the resolutions is the very same from which was evolved the Chicago platform and the candidates for President and Vice-President named thereon. Your action is a fit companion piece to the declaration of your candidate for President, that "he would die before he would support a Democratic candidate on a gold platform," and the denunciation of the southern populists by the chairman of your national committee, "as a general rule not a creditable class;" that they "practically admitted while in St. Louis that they were out for nothing but spoil, and this same spirit will probably dominate their actions in the future," and that "they will go with the negroes, where they belong."

You request that I resign my seat as senator from Madison County forthwith and immediately. No, gentlemen; possess your souls in peace, for I have not the slightest idea of resigning the commission intrusted to me by the people. You have no authority to demand my resignation, for the sole authority delegated you by the people who elected you was to select delegates to the Congressional convention. You have no right to request it, because you can not request a return of that which you did not give.

• This was a Congressional convention; not a senatorial convention.

I am not responsible to you for either my nomination or election, for you were not the convention which nominated me, nor do you embrace the people who elected me. In taking the position I have I am voicing the sentiments of a large majority of my constituents when I was nominated and elected. I owe my allegiance alone to the people, for it is from them that I hold my commission, and not from the Democratic party. How well I have discharged the trust imposed upon me my record of ten years past is a sufficient answer to all your partisan abuse. During all these years I have labored to secure a better and more efficient school system for Alabama, and two years ago in the senate I introduced and urged the passage of a law to secure a free and untrammelled expression of the popular will at the ballot box. In behalf of these two measures at least the people need my services, and they shall have them at the coming session of the senate. It is a remarkable coincidence and pregnant fact that of the three members of your committee who reported back the resolutions for adoption one of them, E. F. Walker, while a member of the house as my colleague voted for and

secured the passage of a measure which disfranchised the people of Huntsville by depriving them of the right to elect their mayor by direct vote of the people (which measure I opposed and afterwards had repealed), and another member, R. E. Spragins, signed a telegram while the measure was pending urging its passage, while the newspaper which has been loudest in its demand for my resignation was the champion of that same iniquitous measure.

Possibly my course in all these matters induced you in your intolerance to request my resignation, for it could not have been based entirely upon the fact of my support of McKinley, because your party having nominated a self-confessed bolter, is even now applauding the action of the Republican Senators, Teller, Dubois, Pettigrew, and others who bolted both the Republican party and its convention. That which your party deems a virtue in them, you denounce as a vice in me. I stand upon that rule of conduct laid down by your candidate, Bryan: "No convention can rob me of my convictions, nor can any party organization drive me to conspire against the prosperity and liberty of my country. A man's duty to his country is higher than his duty to his party." I have ample precedent for my course, in good conscience, in morals, and in law, for in addition to the well-known Democrats who are openly supporting McKinley in the movement for a new ticket at Indianapolis, there are thousands who are striving to do indirectly, that which I shall endeavor to do directly. I am but an atom in this great country, but I shall consecrate my best efforts to maintain those great principles which can only be preserved in my humble judgment, by the election of McKinley and Hobart. If this be treason, make the best of it. You shall not press down this crown of repudiation upon the honest brow of labor. You shall not crucify labor upon a cross of 50-cent silver dollars.

OSCAR R. HUNDLEY,
Senator Fourth District.

Representative RICHARDSON. Judge——

Mr. HUNDLEY. Right here——

Representative RICHARDSON. Just file the paper.

Mr. HUNDLEY. I want to file a paper in connection with that, with your permission. I want to tell you who sent it to me. That was sent to my office and put in there by R. P. Whitman, who this paper shows was secretary of that convention. I want to say that about three years thereafter Mr. R. P. Whitman went to Nashville, Tenn., to have an operation for abscess of the liver performed, and his doctors told him he would not recover, and was liable to die. So on the 20th day of June, 1899, Mr. Whitman, the secretary of that convention, penned the following letter of his own accord, without my knowledge, which I received through the mails.

Representative RICHARDSON. In 1899?

Mr. HUNDLEY. In 1899; three years thereafter. He is the man who was secretary and who bore me that request. I did not bring up these matters, but, of course, when you hit me I hit back in a proper way.

NASHVILLE, TENN., *June 20, 1899.*

HON. O. R. HUNDLEY, *Huntsville, Ala.*

DEAR SIR: I hope you will receive this letter in the same spirit in which it is written and not as mere sentiment, for all such is passed in my life and nothing but stern facts shall be dwelt upon. For some months my health has been failing fast, and the physicians who examined me informed me that I have a complication of diseases, chronic in their nature, and a long, tedious treatment with the best of care would be my only relief. My financial ability is worse than my physical condition, which renders it absolutely impossible for me to take any treatment, as we are without a dollar and living very hard, because I am unable to do any work: he also stated that at any moment I would be liable to sudden death. This does not in the least worry me only as to my family's future, for while some may think I have led a very inconsistent life, I feel safe in saying that I have been sinned against as much as sinned, and only one act of my life at present continually forces itself upon me. All others were done unintentionally, but this was premeditated and I do not attempt to render any excuse for it, but I just can not meet the beyond unless I attempt to as far as lies within me to arrange this by a confession to you and ask that you, if possible, accept this as the best I can offer. For many weeks this has been worrying me, and

I can not rest until I come to you with it. Whether it shall be accepted in any way by you it will relieve my mind.

When I treat a fellow-man wrong I have the courage to make a confession and ask his forgiveness. The year 1896 you were a candidate for Congress, the night before the election I was invited into a certain back room in Huntsville and given 500 tickets and instructed to fold them separately, as if they were folded to vote, then tie them up in bundles of 50 each; that he (the party giving me them) would use 500 the same way; that it took this to beat you and that it must be done; that I had experience in this. I took them and did as directed, carrying them home and working to 2 a. m. Early the next morning I delivered them to party who stated we had you, etc. I also treated you wrong as one of the markers on said day. Now, this was a low-down, mean, contemptible act of mine and one that can bear no excuse, and while I am forever done with politics this has hurt me worse, I swear to you, than any act of my life, for once we were warm friends. I say to you I am ashamed to confess this matter to you, but as it was doing my fellow-man a mean act personally and knowingly I just can not rest in peace or die in peace until I relieve my mind of it. Were my life to pay the forfeit I would do this, for it haunts me daily, poor as we are, with want standing in the door and not a dollar on hand, does not grate on me as this. I make this candidly, please treat it as a personal matter. Other things were done, but this is only one I was in. I want you to let it pass, if you can, for I have suffered. Many times I have started to you. I can not wait longer, as it is my darkest spot.

Yours, truly,

R. P. WHITMAN.

Success to you. This is confidential; treat it so. If I can ever serve you to wipe this out call on me night or day.

Representative RICHARDSON. What has that got to do in this connection?

Mr. HUNDLEY. There [exhibiting] is the original letter from R. P. Whitman.

Representative RICHARDSON. What has that got to do with this convention?

Mr. HUNDLEY. He was the secretary of the convention. I never would have presented it if you had not asked me the question.

Representative RICHARDSON. He was in the service of the railroad for which you were attorney?

Mr. HUNDLEY. Not at the time the letter was written.

Representative RICHARDSON. He went out under a cloud, as you know.

Mr. HUNDLEY. Yes, sir; he went out under a cloud.

Representative RICHARDSON. He went out on account of some speculation?

Mr. HUNDLEY. He was secretary of the convention and handed me the resolution.

Senator BACON. I think that that letter in which he seeks to make reparation for wrong done you was a very proper act on his part.

Mr. HUNDLEY. I think so, too.

Senator BACON. But it has nothing to do with this question.

Mr. HUNDLEY. Neither has the action of the convention or the sending of that communication to me, with all due respect.

Senator BACON. That related to your acts and not to his. This relates solely to his act.

Mr. HUNDLEY. Yes.

Senator BACON. It relates solely to his act, and has no connection with the other acts of which you speak.

Mr. HUNDLEY. Except that he was secretary of that convention.

Senator BACON. I know.

Mr. HUNDLEY. And he is the man who bore me that resolution.

Senator BACON. It has nothing whatever to do with the other acts. I want to say to you now that I am going to ask to have that expunged

from the record, simply on the ground that it has nothing to do with the case. If it had been a letter in which he said he had done you wrong in the convention then it would be pertinent. But this letter has nothing whatever to do with the case.

Mr. HUNDLEY. That is for you to decide. Will you permit me to tell you another reason why I read this letter? It is because I state in my communication to the convention that I believed they were not voicing the sentiment of the people who elected me, and I want to tell you that in the Huntsville precinct where I live, which is in keeping with what Senator Morgan said, where I had formerly as a Democrat been elected to the senate by a majority of 180 or 200, I carried it on the face of the returns, as a Republican, by 47. It is the town in which Judge Richardson votes.

Senator CLARKE, of Arkansas. Forty-seven votes in Huntsville?

Mr. HUNDLEY. I mentioned the city of Huntsville. I did not carry the county. Where the people had known me——

Representative RICHARDSON. Let me see if I can not refresh your memory a little?

HUNTSVILLE, ALA., October 29.

To the PROGRESSIVE AGE.

In reply to your request——

Mr. HUNDLEY. What is the date of that?

Representative RICHARDSON. Wait until I get through.

FROM HON. OSCAR HUNDLEY.

HUNTSVILLE, ALA., October 29.

To the PROGRESSIVE AGE.

In reply to my request that I give you my views upon the financial question now agitating our country, I will state, that I am in favor of the free and unlimited coinage of silver at the ratio of 16 to 1. I am opposed to a single gold standard, as I would also be opposed to a single silver standard. I am now, and have always been in favor of maintaining the public credit, both of the State and the nation, and I believe that every dollar should be worth one hundred cents. I fail to appreciate the arguments made by the advocates of the gold standard, that the free coinage of silver would depreciate the currency, for I am enough of an American to believe that this is the greatest nation on the face of the earth, and that we are amply able to protect our credit and our currency without foreign concurrence. I believe in popular government, and the right of the majority of the people to rule the destinies of this country, and I believe the placing of this country upon the single gold basis, will result in placing the commerce of the country in the hands of a favored few, to the serious detriment of the great masses of the people. The power of wealth, like political power, becomes greater and greater as it is curtailed in the hands of the few. Thomas Jefferson correctly stated the cardinal rule of democracy when he said: "Keep the appointing power as near the people as possible." Upon this great basic principle I am opposed to centralizing the power of the party in the hands of an executive committee, and upon the same principle do I oppose any system of finance which will permit the minority to set the pace at which the great majority of freemen must mark time. I may say in passing, that I have always maintained, and shall continue to maintain, that the interests of the people can best be conserved through the democratic party.

OSCAR HUNDLEY.

Did you write that?

Mr. HUNDLEY. I did.

Representative RICHARDSON. Did you——

Mr. HUNDLEY. Let me finish.

Representative BURNETT. What is the date—1896?

Mr. HUNDLEY. What time of the year?

Representative RICHARDSON. October.

Mr. HUNDLEY. That was in October, 1896?

Representative RICHARDSON. You have just stated that the reason—

Mr. HUNDLEY. That was before I ran on the Republican ticket.

Representative RICHARDSON. Of course it was, and you then voted for McKinley.

Mr. HUNDLEY. Wait until I get through.

Representative RICHARDSON. McKinley ran in 1896?

Mr. HUNDLEY. Certainly. He was elected in November, 1896. At the time I wrote that article I was a Democrat, and, like a good many other Democrats, I believed in that doctrine, and it was the sine qua non in that year, to be a Democrat, to believe in the free and unlimited coinage of silver. After Mr. Bryan was nominated I gave more thought and consideration to it and studied the question, as Mr. Carlisle did and other Democrats did.

Representative RICHARDSON. Had not Bryan been nominated when you wrote this letter.

Mr. HUNDLEY. No; he had not been nominated. I said that I did not write that until I gave further thought to it.

Representative RICHARDSON. Did you not—

Mr. HUNDLEY. Hear me through, now. After giving further thought to it, and feeling that in this country freedom of political conscience was guaranteed by the Constitution, I determined that I would change my political faith.

Senator BACON. Bryan was nominated in July before that.

Mr. HUNDLEY. Yes.

Senator BACON. I think your best reason for that change—

Mr. HUNDLEY. No.

Senator BACON. Was that that was at that time the position of the Republican party, and that if they could change you could change also.

Mr. HUNDLEY. I am very much obliged to you for the suggestion. I am stating the truth about it. I gave further thought, as Mr. Carlisle and other gentlemen did, to the issue. I do not understand that this is a country where anyone is compelled to adhere to one political faith, and I do not understand that if a man changes his political faith it disqualifies him to be a United States Senator or a United States judge.

Representative RICHARDSON. But the change was very sudden on your part?

Mr. HUNDLEY. Yes, sir.

Representative RICHARDSON. Very sudden?

Mr. HUNDLEY. As soon as I studied the question I changed suddenly. That is right. As soon as I became convinced that I was wrong—

Representative BURNETT. How long was it after you wrote that letter until you had that change of heart?

Mr. HUNDLEY. I can not tell you how many hours or minutes. It was twelve years ago.

Representative BURNETT. How many months?

Mr. HUNDLEY. I can not tell you. I changed—

Senator BACON. When did you run against General Wheeler?

Mr. HUNDLEY. In 1896.

Senator BACON. The same year?

Mr. HUNDLEY. Yes, sir. I was nominated by acclamation.

Senator BACON. That letter must have been written, then, six weeks before the election?

Mr. HUNDLEY. It may have been. That letter was written prior to my nomination as a Republican.

Senator BACON. How long before?

Mr. HUNDLEY. I could not tell you. It was twelve years ago.

Senator BACON. It was in October. What is the date of that?

Mr. HUNDLEY. It just says "October 29."

Senator BACON. The election occurred——

Mr. HUNDLEY. It does not say 1896.

Representative RICHARDSON. It does not say that. I have not a copy of the whole paper.

Mr. HUNDLEY. It must have been in 1895. I do not know how that could have been. I do not know. But I will say positively that that was published before I was nominated by the Republicans for Congress. I could hardly run for Congress on the Republican ticket and come out in a communication and say I was going to support the Democratic party.

Senator DILLINGHAM. It must have been the year before.

Mr. HUNDLEY. Yes. You see Judge Richardson presents this in a way——

Representative RICHARDSON. It was sent to me.

Mr. HUNDLEY. Then, Judge, you ought not to have said it was in 1896.

Representative RICHARDSON. That was my information.

Mr. HUNDLEY. No, sir. It could not be in October, 1896—October 29, 1896, three days before the election.

Senator BRYAN. What is the date?

Mr. HUNDLEY. October 29.

Senator BRYAN. That would be four days before the election. You did not have time to get nominated then.

Mr. HUNDLEY. No, sir.

Representative RICHARDSON. It may be 1895.

Mr. HUNDLEY. You ought not to produce it and——

Representative RICHARDSON. I have a right to produce it.

Mr. HUNDLEY. You made the positive statement that it was 1896.

Representative RICHARDSON. That was my information. I do not make it myself.

Mr. HUNDLEY. I asked you when it was.

Representative RICHARDSON. I do not look upon the matter of time as at all material.

Mr. HUNDLEY. I want it like it is. I do not deny anything in my whole public, private, or political career, but I want it correct.

Representative RICHARDSON. That does not make any difference. The time is not material.

Mr. HUNDLEY. I want the committee to understand that this was not three days before the election in 1896, and I think I am entitled to say that.

Representative RICHARDSON. Certainly you are.

Senator BACON. I think it is very evident it was not that year.

Representative RICHARDSON. I think so myself. I concede it. I do not believe it was in 1896. It must have been 1895.

Mr. HUNDLEY. You said 1896.

Representative RICHARDSON. The information was——

Mr. HUNDLEY. You see you have accused me of dissembling and deceiving the committee, and all that. I think it is fair, when I ask you a question, that you answer it square out. I asked you categorically the question when that was. You said 1896.

Representative RICHARDSON. I do not know.

Mr. HUNDLEY. I am not stating what you say now, but when I asked you the question——

Representative RICHARDSON. After 1896 you quit the Republican party and came back into the Democratic party again?

Mr. HUNDLEY. No, sir.

Representative RICHARDSON. Did you not say that to Doctor McDonald?

Mr. HUNDLEY. I did not.

Representative RICHARDSON. Did you not tell him you had made a great mistake and that you were coming back into the Democratic party, and in 1898 voted the full Democratic ticket?

Mr. HUNDLEY. I did not tell him. Your first cousin, Mr. Lane, published that first, but it was not true.

Representative RICHARDSON. Do not talk about dead men.

Mr. HUNDLEY. In 1898 the Republicans of Alabama did not put out any candidate, and there was a Populist nominated by the Populites. I think Governor Johnston was the candidate of that year, and I do not hesitate to say that as against this Populist, between the two, I voted for Governor Johnston.

Representative RICHARDSON. Did you not tell him you had made a great blunder and a mistake.

Mr. HUNDLEY. No, sir.

Representative RICHARDSON. By joining the Republican party and that you had come back to your Democratic home again?

Mr. HUNDLEY. No, sir; I did not. You said not to talk about dead men, and now you are talking about a dead man.

Representative RICHARDSON. I regret very much that he is not alive.

Mr. HUNDLEY. So do I, since you make that imputation. I left the Democratic party on account of populism, and I declined to vote for the populist and voted for Johnston.

Representative RICHARDSON. Who was the Populist?

Mr. HUNDLEY. Mr. Goodwin or Mr. Deans. Mr. Deans has since become a Republican and is now United States marshal at Mobile, and indorsed me for judge. Do you want to go along and complete your statement?

Representative RICHARDSON. I am through with the political aspect.

Mr. HUNDLEY. I am glad of it. I have known all the time that there was a good deal of politics in it.

Representative RICHARDSON. You have stated very frankly that you refused to resign when called upon to do so by the Democratic convention?

Mr. HUNDLEY. Yes, sir; I have. If all of this political matter is to remain in the record, I insist that this letter which I have marked "Exhibit K" be inserted.

Senator BACON. That will not be decided now.

Senator JOHNSTON. Did you not want to include a paper from the legislature?

Mr. HUNDLEY. In addition to my indorsements for judge, I present, bearing date November 15, 1907, the indorsement, first, of the Alabama State senate, containing every name of a State senator, I believe, but three or four. Second, I present to you the indorsement by the house of representatives of Alabama, containing every member of the house but about 15 or 18. There are 107 members altogether. I think this has all but 15 or 18.

Senator DILLINGHAM. How many members has your house?

Mr. HUNDLEY. A hundred and seven. The terms of that indorsement are as follows:

We, the undersigned, members of the senate of Alabama, would most respectfully petition your honorable body to promptly confirm the nomination of Hon. Oscar R. Hundley as judge of the United States district court for the northern district of Alabama.

We make this request based upon the fact that, during his service upon the bench, since his appointment, Judge Hundley has demonstrated his eminent ability and fitness to fill this important office, and has received the indorsement of the bench and bar of the district, and his prompt confirmation would, in our judgment, meet with the approval of the people of this district.

That is from both branches of the legislature.

Representative BURNETT. Let me see it a moment.

Mr. HUNDLEY. Certainly. I thank you, Senator Johnston, for calling my attention to it. I mark these Exhibits L and M.

Senator CLARKE, of Arkansas. That is all but the receivership. This completes that matter.

Representative RICHARDSON. I have not asked him anything about the receivership. I have not asked him anything about the constitutional amendment. I wish to ask him something about those matters.

Representative CRAIG. How old were you when you were convicted of playing poker.

Mr. HUNDLEY. I will calculate it. I am now 53. That was in 1881. It is twenty-seven years ago.

Representative CRAIG. You were 26 years old?

Mr. HUNDLEY. Yes.

Representative CRAIG. Were you tried by jury?

Mr. HUNDLEY. No, sir; by the judge; but I was guilty.

Representative CRAIG. You pleaded guilty?

Mr. HUNDLEY. Yes, sir; I pleaded guilty.

Representative CRAIG. Were there any other cases tried at the same time?

Mr. HUNDLEY. Yes, sir.

Representative CRAIG. How many?

Mr. HUNDLEY. I do not remember. Do you remember? It was at the time of the famous Dixie White cases. Dixie White was released from jail. He was in for burglary. He was released by the solicitor, Judge Richardson's cousin, who got him to make affidavits against some 80 or 90 or 100 people in the city of Huntsville. That created a great deal of feeling in Huntsville. I think I have the editorial comments of the press made at that time, from the Huntsville Democrat and the Republican paper. The solicitor got \$60 out of every case that this little negro burglar brought by information and belief, and Judge Richardson, as judge of the county court,

received \$3 or \$4 for each case he tried. I will bring the newspapers of that time here to-morrow. They severely criticised both the solicitor and the judge, stating that it looked like a fee-making arrangement all the way through. There was intense feeling about it. You will find in 60 Alabama, the case of *Sail v. The State*. I have a copy of it here. In that case all these facts were brought out, on a motion to dismiss or quash the petition on the ground that the statute in our State, which prevented the solicitor from bringing cases on information and belief, did not permit him to do it indirectly by getting someone else to sign his cross mark and then the solicitor witness it. But the supreme court of Alabama held that that was technically no violation of the law, and the information of the little negro thief, by his cross mark, witnessed by Nick Davis, county solicitor, stuck. I have the editorial comments at that time, which I will bring with me.

Representative CRAIG. Were you convicted then on the statement of the negro, or on your own statement?

Mr. HUNDLEY. On my own statement. He did not know me from Adam.

Representative CRAIG. You said he made the information against you?

Mr. HUNDLEY. Yes, sir; but he knew nothing about it.

Representative CRAIG. You pleaded guilty.

Mr. HUNDLEY. I did, because the solicitor said he would convict me if he had to go on the stand himself.

Senator BRYAN. Did the negro make the affidavit against you?

Mr. HUNDLEY. Yes, sir.

Senator BRYAN. He did not see you playing poker?

Mr. HUNDLEY. I never knew him. He was a burglar in jail, and the comments of the press at that time show all these facts, and the one case in 60 Alabama shows it. Captain Humes, who testified—

Representative CRAIG. Why did you plead guilty if the witness against you did not know anything about it?

Mr. HUNDLEY. You do not understand me. The negro who made the affidavit on information and belief knew nothing about it; but Mr. Davis, the county solicitor, in whose law office we played cards, knew all about it. He and his brother, George Davis, and others that I played with. I can not remember all of the parties.

Representative RICHARDSON. You were guilty?

Mr. HUNDLEY. Certainly; I do not deny it.

Senator BRYAN. The solicitor played with you?

Mr. HUNDLEY. Yes, sir. He was a first cousin of Judge Richardson, and I was invited in the game in his office.

Representative RICHARDSON. Since the judge has made that statement, I think I ought to make a statement in connection with that matter. That gambling—

Senator BRYAN. Was anybody beside yourself prosecuted?

Mr. HUNDLEY. I was the only one prosecuted, because, as I told you, I had defeated Mr. Davis for city attorney.

Representative RICHARDSON. Who else was in the crowd with whom you played?

Mr. HUNDLEY. I think Mr. George Davis, Mr. Nick Davis, and my cousin Richard Lowe, and my cousin Bob Lowe.

Representative RICHARDSON. Gambling had become so bad in Huntsville and had become so objectionable. The grand juries had failed to reach them. The grand jury would summon a man to appear before them as a witness against a gambler and he would fail to appear. The grand jury would indict him, and the gambler would come up and pay his fine. The result was finally that the moral sense of the community was so aroused against the gambling spirit in Huntsville that Judge Henry C. Jones, who was Congressman at one time in the Confederate congress and a very prominent man, who was the solicitor of that district, and Mr. Davis, who was assistant solicitor, brought those cases, and Mr. Hundley, with 19 others, white men—every one of them were white men—was convicted of gambling in that court; and the supreme court affirmed it.

Senator BRYAN. Did you defeat the country solicitor for city attorney after the poker game?

Mr. HUNDLEY. Before.

Senator BRYAN. You defeated him before?

Mr. HUNDLEY. Yes, sir; before.

I will ask Judge Richardson a question. You do not deny that was where I played, in Nick Davis's office?

Representative RICHARDSON. I do not know where you played. I never was in a gambling room in Huntsville in my life.

Mr. HUNDLEY. Neither was I. I never was in a gambling room in Huntsville in my life.

(At 5 o'clock and 10 minutes p. m. the subcommittee adjourned until to-morrow, Saturday, February 15, 1908, at 10 o'clock a. m. and then further adjourned till February 21, 1908, at 10 a. m.)

WASHINGTON, D. C., *February 21, 1908.*

The subcommittee met at 10 o'clock a. m.

Present: Senators Knox (chairman) and Clarke, of Arkansas; also Senator Clark, of Wyoming, and Senator Bankhead; also Representatives Clayton, Craig, and Richardson.

STATEMENT OF OSCAR R. HUNDLEY—Continued.

Senator KNOX. Are you ready to proceed, Judge?

Mr. HUNDLEY. Yes. Gentlemen, we are down to the receivership. We are now at a matter affecting my integrity as a judge, and that is the matter to which I shall address my attention.

At the outset of this investigation a rule of the committee was referred to which prevented the presence before the committee of the nominee or his counsel or anyone in his behalf. I am not asking any counsel and do not need any. But I have with me to-day the special master appointed by me in the Southern Steel matter.

Necessarily a case involving \$25,000,000, with numerous pleadings, many of which had been referred to the special master and many of which came before the judge, will make a very large record; and in order to expedite this hearing and to get to the pregnant facts

in the matter under the charges made against me I should like for those attorneys, who were attorneys in the case, and the special master, who has the records with him, to be present, in order that, when I call for a record, he may assist me by handing it to me.

Senator KNOX. Is he here now?

Mr. HUNDLEY. Yes.

Senator KNOX. Bring him right in. That is all right.

Sterling A. Wood, E. K. Campbell, A. Leo Oberdorfer, and F. E. Blackburn entered the committee room.

Mr. HUNDLEY. Mr. Wood, get your records, so that you can hand them to me as I call for them.

Mr. WOOD. Very well.

Mr. HUNDLEY. When we concluded at the prior hearing the indorsement of my career upon the bench by the senate and house of representatives of the Alabama legislature was misplaced, and was found afterwards among other papers in the case, including some additional indorsements by members of the bar. I desire now simply to file that without comment, marking it "Exhibit X," and I ask that it be copied into the record.

The matter referred to is as follows:

SENATE CHAMBER,
Montgomery, November 15, 1907.

To the Presiding Officer and Members of the United States Senate:

We, the undersigned members of the senate of Alabama, would most respectfully petition your honorable body to promptly confirm the nomination of Hon. Oscar R. Hundley as judge of the United States district court for the northern district of Alabama.

We make this request based upon the fact that, during his service upon the bench, since his appointment, Judge Hundley has demonstrated his eminent ability and fitness to fill this important office, and has received the indorsement of the bench and bar of the district, and his prompt confirmation would, in our judgment, meet with the approval of the people of his district.

Amos Horton, thirty-second district; Henry B. Gray, president of the senate; Nathan L. Miller, senator, thirteenth senatorial district; Ed. D. Hamner; B. A. Forrester, thirty-ninth district; John F. Wilson, third district; Clive E. Reed, seventeenth district; John W. Ourton, ninth district; James W. Strother, tenth district; Norman Gunn, nineteenth district; John Gamble, twenty-fifth district; G. B. Wimberly, fourteenth district; Oscar O. Bayles, twenty-first district; P. B. Davis, twenty-third district; M. L. Leith, twelfth district; E. H. Glenn, twenty-seventh district; H. P. Merritt, twenty-sixth district; W. W. Barbour, twenty-ninth senatorial district; Fred. T. Blackmon, seventh senatorial district; W. C. Jones, twenty-second senatorial district; J. A. Lusk, fifth senatorial district; Frank S. Moody, eleventh senatorial district; M. L. Doster, fifteenth senatorial district; George T. McWhorter, thirty-first district; H. E. Reynolds, eighteenth district; W. T. Lowe, second district; J. A. Kyle, secretary of the senate; Daniel G. Cook, clerk rules committee; John F. Proctor, reading clerk of the senate.

To the Presiding Officer and the Members of the Senate of the United States:

We, the undersigned members of the house of representatives of Alabama, would most respectfully petition your honorable body to promptly confirm the nomination of Hon. Oscar R. Hundley as judge of the district court of the United States for the northern district of Alabama. We make this request based upon the fact that during his service upon the bench since his appointment Judge Hundley has demonstrated

his ability and eminent fitness to fill this important office, and his prompt confirmation would, in our judgment, meet with the approval of the people of his district.

H. R. Dudley, J. Osmond Middleton, A. R. Powell, J. S. Williams, Hosea Pearson, J. D. Carmichael, Jos. F. Arnold, J. H. Lawson, F. O. Hoffman, Thos. L. Bulger, E. M. Oliver, S. L. Burney, W. H. Elrod, J. H. Crawford, Jas. S. Benson, N. M. Rowe, A. H. Carmichael, J. T. Glover, L. J. Haley, jr., Jere C. King, W. A. Weaver, J. T. Fuller, John R. Sample, James Armstrong, William H. Long, jr., W. M. Coleman, Ernest Lacy, J. Lee Long, H. B. Strogall, J. R. Vance, R. H. Arrington, C. E. Mitchell, A. S. Lyons, A. M. Trunstall, A. D. Kirby, B. B. Peete, W. F. Herbert, L. C. Smith, R. C. Smith, Ernest W. Thompson, W. J. Jones, D. F. Crum, W. J. Price, John McDuffie, R. T. Goodwyn, M. W. Purham, Samuel Will John, R. F. Lovelady, H. P. Smith, C. W. White, Wm. M. Cameron, S. G. Woolf, J. D. Doyle, Lee McMillan, W. B. Doyle, W. R. Avery, Wm. L. Pitt, sr., Chas. Rattrey, W. E. Urquhart, J. W. Moore, J. Fletch Turner, A. D. Pitts, R. R. Kornegay, Eugene Ballard, J. H. L. Henley.

To the Presiding Officer and Members of the Senate of the United States:

We, the undersigned members of the bar of Cleburne County, Ala., would most respectfully petition your honorable body to promptly confirm the nomination of Hon. Oscar R. Hundley as United States district judge for the northern district of Alabama. We make this request based upon the fact that, since his appointment, Judge Hundley has demonstrated his fitness and eminent ability to perform the duties of that important office and that his confirmation will meet with the hearty approval of the people of this district.

Respectfully,

R. L. EVANS.
J. B. STEPHENS.
J. R. BARKER.
W. B. MERRILL.
THOMAS H. SHACKLEFORD.
W. C. McMAHAN.

To the Presiding Officer and Members of the Senate of the United States:

We, the undersigned members of the bar of Clay County, Ala., would most respectfully petition your honorable body to promptly confirm the nomination of Hon. Oscar R. Hundley as United States district judge for the northern district of Alabama. We make this request based upon the fact that, since his appointment, Judge Hundley has demonstrated his ability and eminent fitness to perform the duties of that important office and that his confirmation will meet with the hearty approval of the people of this district.

Respectfully,

WALTER S. SMITH.
CORNELIUS & GAY.
EDGAR L. WHATLEY.
E. J. GARRISON.
R. G. ROWLAND.
E. S. CORNELIUS.

Mr. HUNDLEY. I also present the indorsement of 98 per cent of the bar of my district, and the judiciary of my State, including every circuit judge in the district, and every city judge in the district except one, with numerous indorsements of members of the bar.

Senator CLARK, of Wyoming. Did Sid Bowie sign that?

Mr. HUNDLEY. Yes, sir; you will find his signature there. This I mark "Exhibit H," and ask that it may be included in the record.

(The matter referred to is as follows:)

BRIEF.

Letters and memorials to the United States Senate, indorsing the official record of Judge Oscar R. Hundley, and urging his confirmation.

The supreme court of Alabama.—Hon. John R. Tyson, chief justice; Hon. N. D. Denson, associate justice; Hon. J. R. Dowdell, associate justice; Hon. John C. Anderson, associate justice.

Judges of circuit and city courts and members of the bar.—Hon. A. A. Coleman, senior judge, tenth judicial circuit; Hon. A. O. Lane, associate judge, tenth judicial circuit; Hon. Charles Senn, senior judge city court; Hon. Charles W. Ferguson, associate judge city court; Hon. H. A. Sharpe, associate judge city court; Hon. C. C. Nesmith, associate judge city court; Hon. D. A. Greene, senior judge criminal court; Hon. Samuel L. Weaver, associate judge criminal court; Hon. I. H. Benners, judge inferior court, first division; Hon. H. B. Abernathy, judge inferior court, second division; Hon. S. E. Greene, judge of probate; Hon. Tancred Betts, judge law and equity court, Madison County; Hon. James J. Ray, judge fourteenth circuit; Hon. William Jackson, judge city court, Bessemer; Hon. Thomas W. Wert, judge law and equity court of Decatur; Hon. W. W. Haralson, judge eleventh judicial circuit; Hon. Thomas M. Sowell, judge city court, Walker County.

The petition urging Judge Hundley's confirmation is as follows:

"To the Presiding Officer and Members of the Senate of the United States:

"We, the undersigned members of the bar of Birmingham, Ala., would most respectfully petition your honorable body to promptly confirm the nomination of Hon. Oscar R. Hundley as judge of the district court of the United States for the northern district of Alabama. We make this request based upon the fact that during his service upon the bench since his appointment Judge Hundley has demonstrated his ability and eminent fitness to fill this important office, and his prompt confirmation would, in our judgment, meet with the approval of the people of this district."

This petition has been signed by the following members of the bar:

The bar of Birmingham.—E. H. Cabiness, James Weatherly, Walker Percy, Frank S. White, Edmund C. Winston, J. F. Stallings, P. G. Bowman, Albert Latady, Edward D. Smith, W. H. Smith, Augustus Benners, Rich B. Kelly, John M. Caldwell, John P. Tillman, Sterling Wood, A. G. Smith, Jere C. King, R. H. Pearson, B. M. Allen, Robert C. Redus, John B. Weakley, William M. Walker, W. C. Garrett, J. B. Aird, Hinds Peevey, W. K. Terry, J. W. Altman, Register in Chancery Zell Gaston, Lee C. Bradley, W. I. Grubb, F. E. Blackburn, White E. Gibson, Erle Pettus, J. A. Estes, John London, Alex. T. London, George A. Evans, W. K. Brown, James M. Russell, S. D. Murphy, John P. Abbott, C. B. Beddow, R. D. Coffman, S. C. M. Amason, Lee J. Marx, John H. Miller, J. R. Tate, Charles J. Dougherty, J. W. Bush, Morris Loveman, Julius W. Davidson, William Vaughn, John T. Glover, E. H. Dryer, R. H. Thach, M. F. Cahalan, James L. Cole, H. C. Bullock, H. P. Heflin, W. J. Whitaker, Lee Cowart, J. S. Kenedy, S. J. Bowie, Cabaniss & Bowie, F. I. C. Crow, Charles A. Calhoun, George Huddlestun, W. T. Hill, John W. Chamblee, Roscoe Chamblee, Escar Floyd, Von L. Thompson, W. P. McCrossin, J. Drennen, Nathan L. Miller, Henry Marscheimer, Ivey F. Lewis, Thomas J. Wingfield, W. T. Howlett, John C. Carmichael, Hugh C. Crane, R. B. Smyer, Frank C. Andress, Frank Deedmyer, W. W. Shortridge, David J. Davis, John C. Pugh, N. D. Steele, John C. Forney, John D. Strange, John McQueen, Robert E. Smith, John Vary, R. H. Kerr, L. J. Haley, jr., Robert J. Wheeler, L. M. Washington, Francis M. Lowe, M. M. Ullman, C. C. Leadbeater, H. H. Goldstein, Samuel Will John, A. C. Howze, William C. Ward, John W. Tomlinson, Frank S. White, jr., W. T. Ward, J. H. Ward, P. I. Monks, A. Leo Oberdorfer, Hollis B. Parrish, D. K. Middleton, John Denson, W. W. Baldwin, Zeb Rudolph, Vasser L. Allen, W. E. Martin, Nisbet Hambaugh, J. T. Garretson, Robert N. Bell, J. F. Stokely, George Bondurant, Charles B. Powell, R. P. McNally, David S. Anderson, E. M. Hamill, R. J. McClure, Roy McCullough, C. D. Comstock, Curtis S. Shugart, Victor Vance, W. M. Jones, Frank W. Smith, Richard L. Williams, Charles G. Brown, M. J. Gregg, John P. Evans, R. Du Pont Thompson, Isham D. Hobbs, E. M. Davis, J. Q. Smith, Griffin Lamkin, J. F. Gillespie, E. J. Smyer, Fergus W. McCarthy, C. W. Hickman, John L. Chisholm, R. P. Wetmore, Charles P. Jones, W. M. Robinson, George E. Bush, Archer L. Brown, Joseph H. Montgomery, Richard H. Fries, L. C. Dickey, M. A. Dinsmore, Charles E. Rice, W. A. Denson, John D. Williams, H. F. Jones, W. T. Edwards, Francis D. Nabers.

The bar of Tuscaloosa.—J. J. Mayfield, C. B. Verner, R. T. Nabors, R. H. Little, J. M. Foster, Fleetwood Rice, A. B. McEachin, A. B. McEachin, jr., Thomas B. Ward,

James C. Brown, J. W. Carson, Henry B. Foster, M. T. Ormond, W. Moody, Daniel Collier, R. H. Scrivener, Henry A. Jones, S. H. Spratt, jr., Robinson Brown, A. S. van de Graaf.

The bar of Gadsden.—Amos E. Goodhue, Woodson J. Martin, P. E. Culli, W. T. Murphree, R. A. D. Dunlap, W. R. Dortch, H. T. Bailey, Thomas H. Stephens, J. B. Martin, O. B. Roper, M. C. Sivley, John A. Inzer, C. P. Butcher, Alto V. Lee, jr., A. R. Brindley, L. P. Rainey, G. C. Allen, C. W. Allen, Cato D. Glover, J. E. Blackwood, J. R. Foreman, J. A. Bilbro.

The bar of Anniston.—Knox, Acker & Blackmon, W. W. Whiteside, Tate & Walker, J. H. Wilson, T. Benn Kerr, Matthews & Matthews, T. C. Sensabaugh, Lapsley & Arnold, W. C. Tunstall, jr., N. A. Lapsley, James T. Greene, Blackwell & Agee, H. D. McCarty, C. H. Gourg, Charles P. Pratt.

The bar of Scottsboro.—John B. Tally, William H. Norwood, Virgil Bouldin, John F. Proctor, J. H. Gregory, L. E. Brown, R. W. Clopton, L. C. Caulson.

The bar of Tuscumbia.—Ed. B. Almon, W. L. Chitwood, John C. Rather, jr., J. L. Kirk, James L. Branch, A. H. Cornishchaef, M. P. Chitwood.

The bar of Huntsville.—Tancred Betts, judge law and equity court; T. B. Grimmett, J. W. B. Hawkins, D. I. White, Lawrence Cooper, James H. Pride, F. Turner Petty, Milton Humes, R. E. Smith, David A. Grayson, W. N. Benson, Paul Speake, George P. Cooper, Shelby S. Fletcher, W. F. Esslinger, Ben P. Hunt, Jere Murphy, jr., Z. I. Drake, W. L. Clay.

The bar of Jasper.—Bankhead & Bankhead, Acuff & Cooner, J. B. Powell, Davis T. Fite, D. A. McGregor, M. L. Smith, D. D. May, James J. Ray, judge fourteenth circuit; T. L. Siwell, judge city court; Lacey & Lacey.

The bar of Cullman.—J. B. Brown, S. J. Griffin, A. A. Griffith, George H. Parker, Sutton L. Fuller, Emil Aldrichs, Asa B. Fuller, J. M. Kirkpartick.

The bar of Russellville.—Travis Williams, B. H. Sargent, W. H. Key, Almon & Chenault, Joseph W. Bolton, county solicitor; Henry D. Jones.

The bar of Guntersville.—D. Isbell, J. L. Burke, C. B. Kennamer, J. T. Johnson, J. A. Lusk, O. D. Street.

The bar of Haleyville.—J. J. Curtis, W. V. Mayhall, T. H. Davidson, R. L. Blanton, Charles D. Hudgins.

The bar of Hamilton.—J. T. Johnson, Ernest B. Fite, K. V. Fite, R. W. Quinn, C. E. Mitchell, Will B. Ford.

The bar of Fort Payne.—R. H. Hunt, Isbell & Presley, J. D. Pope, Howard & Hunt, S. B. Stone, W. W. Haralson.

The bar of Fayette.—Cecil A. Beasley, Robert F. Peters, Charles W. Sanders, W. L. Harris, W. S. McNeil.

The bar of Sheffield.—J. L. Andrews, James L. Alexander, John H. Peach.

The bar of Vernon.—J. C. Milner, S. J. Shields, Walter Nesmith.

Additional indorsements.—Hon. John W. Inzer, judge sixteenth circuit; Hon. Charles P. Almon, judge eleventh circuit; Hon. W. H. Simpson, chancellor; Hon. D. W. Speake, judge eighth judicial circuit; Hon. S. L. Sowell, judge circuit court.

State officials.—Hon. Henry B. Gray, lieutenant-governor; Hon. Frank N. Julian, secretary of state; Hon. W. W. Brandon, state auditor; Hon. J. W. Riggs, librarian supreme court; Hon. E. L. Higdon, sheriff Jefferson County.

Members of the senate and house of the Alabama legislature.

Additional indorsements of the bar.—The bar of Decatur, Ala.; the bar of Talladega, Ala.; the bar of Columbiana, Ala.; the bar of Russellville, Ala.; the bar of Cleburne County, Ala.; majority of the bar of Huntsville, Ala.; Hon. W. T. Lawler, judge of probate court; the bar of Clay County.

Mr. HUNDLEY. There are some little errors in the record, to which I will call attention at the conclusion of my testimony. One of them is—just to show the nature of them—where it is stated that the President received telegrams from members of the supreme court. It should have been telegrams from various judges of the courts of Alabama.

Gentlemen, I have answered consecutively so far all the charges to which reference was made by Senator Dillingham in his letter to me of January 17, except the following:

Your action in appointing receivers of the Southern Steel Company, was also sharply criticized. The main ground of complaint was that you refused to appoint a gentleman formerly connected with the company who had exceptional knowledge of the business, and who stood ready to furnish all the money necessary to keep the company in operation, and whose appointment was desired by the creditors.

That, gentlemen, is a matter in reference to my official conduct since my appointment as judge. I do not offer or attempt to offer any apology for my conduct in this case, directly or indirectly. I shall present to you now as the judges trying this case the full record and the facts as they appear.

In the outset, I trust I am not out of place in saying that this charge presents to the committee the remarkable position of a judge being called upon to answer for his official conduct before a committee in a case he has tried, in which every order made by the judge has been acquiesced in by the attorneys representing the bankrupt. Mr. O. R. Hood, who testified here; the attorneys representing the petitioning creditors requesting the appointment of the two Adlers; and everyone else connected with the case save and except the second petitioning creditors, who are here to-day in the person of their council, who were before my court and against whom I decided in favor of Mr. Benners and Mr. Hood. They are here as my friends, although I decided the issues against them. But in so far as the prosecution of this matter is concerned they appear here, having assented not only in person as fact, but the record shows that they have not objected, directly or indirectly, to any act of mine upon the record, nor have they taken an appeal; especially have they not taken an appeal against my conduct in appointing the receivers, when as a matter of fact at the time that I made that appointment the court of appeals of the fifth judicial circuit was in session at Montgomery, and that court had jurisdiction by review to have taken the whole matter of my appointment of these receivers up and reviewed the whole question, and it was a preferred case in that court, and they could have had an adjudication of that issue probably within forty-eight hours.

Senator KNOX. Let me inquire here, just for my own information, because I have not attended the previous hearings——

Mr. HUNDLEY. Certainly.

Senator KNOX. As I understand, there is no charge made against you involving the exercise improperly of judicial discretion in any matter connected with the case except the matter of the receivership?

Mr. HUNDLEY. That is all.

Senator KNOX. I think it would be just as well for you to get down to the facts.

Mr. HUNDLEY. Why I appointed those men?

Senator KNOX. Yes; instead of arguing it. I like to hear what the facts are.

Mr. HUNDLEY. I will do that, Senator.

On the evening of the 24th day of October, 1907, I received a telephone message from Mr. Walker Percy, of the firm of Percy & Benners, stating that his partner, Mr. Benners, would appear before me in Huntsville, Ala., on the next morning.

Senator CLARK, of Wyoming. Is that the Benners who was present before the subcommittee?

Mr. HUNDLEY. Yes, sir; asking the appointment of receivers in the Southern Steel Company; and he would like very much indeed for me to appoint the Adlers. I replied to him that that matter I would take up when they came.

Thereafter immediately there was continuous telephoning to me by various parties in Birmingham, creditors, making a most aggres-

sive and determined objection to the appointment of the two Adlers. Among those were Mr. Frank S. White, whose statement I now file, marked "Exhibit Y."

FRANK S. WHITE & SONS,
ATTORNEYS AT LAW,
Birmingham, Ala., February 11, 1908.

HON. OSCAR R. HUNDLEY, *Washington, D. C.*

DEAR SIR: Since the matter of your confirmation has been up before the Senate committee it has occurred to me that perhaps a statement from me might be of some benefit to you in that regard.

As you will no doubt recall, on the evening prior to the appointment of the receivers in the Southern Steel Company case I talked with you over long-distance telephone, you being in Huntsville and I in Birmingham, and at that time I told you that our firm represented \$15,000 or \$20,000 in claims, and that we were opposed to the appointment of the Adlers as receivers, in that the Adlers were stockholders in one of the petitioning creditors' corporations seeking to have the Southern Steel Company adjudicated a bankrupt. At that time I asked that you defer making the appointment until we could be heard on the proposition. You stated that Mr. Benners was either on his way there or was present, and that you would take up the matter of the appointment of the receivers the next morning. I stated to you that I had no particular person in view for one of the places, but that I thought the unsecured creditors should name one of the receivers at least, as my information at that time was that the Adlers were the choice of the secured creditors. It is my recollection that in this conversation I stated to you that I thought the interests of the unsecured creditors would best be subserved by the appointment of Mr. J. O. Thompson, who was perfectly fair, of strict integrity, and who had made a success in the business world. I am sure that the appointment of Mr. Thompson gave entire satisfaction to the unsecured creditors. I know, of my own knowledge, that those whom I represented, for instance, Goodall, Brown & Co., Collins & Co., Carter Dry Goods Company, Standard Fuel and Supply Company, and others, were satisfied with his appointment, and not a single one of the creditors have I heard criticise you about the appointment. On the other hand, I have heard several of them say that they were pleased that you did not fall into the scheme of appointing the Adlers and giving them entire authority in the premises.

I assure you that if you have occasion to use this letter before the Committee or otherwise, you may do so.

Yours, very truly,

FRANK S. WHITE, Jr.

Senator CLARKE, of Arkansas. Who is Mr. White; and in what connection did he appear?

Mr. HUNDLEY. He is a prominent lawyer of Birmingham.

Senator CLARKE, of Arkansas. What did he have to do with this case?

Mr. HUNDLEY. He represented a large number of creditors—his firm, Frank S. White & Sons.

Senator CLARKE, of Arkansas. Did he represent them on the record, in the pleadings filed in the court?

Mr. HUNDLEY. Yes, sir; and at the hearing, but not at the hearing for the appointment of a receiver. He merely telephoned me, as stated, what I have detailed to you.

In addition to that, I received either a telegram or a telephone message, I can not remember which—Mr. Blackburn can state—or it was communicated to me by some one; maybe by one of the lawyers in Huntsville—that Messrs. Powell & Blackburn would also be present, representing certain creditors, and requesting that I take no action until their arrival. I told them I would not. I also received a telegram from O. R. Hood, stating that he represented the Southern Steel Company, and asking me to take no action until his arrival.

The next morning at 9 o'clock all these gentlemen met at my former law office in Huntsville, Ala. The court at Huntsville was

then in session. When they met there they presented to me a petition requesting the appointment of receivers—a petition in bankruptcy.

Senator CLARKE, of Arkansas. What amount of claims was it alleged that those creditors represented?

Mr. HUNDLEY. I am going to give that. I present here, gentlemen, for the inspection of the committee, the original petition filed by Mr. Benners, of the firm of Percy & Benners, the gentleman who testified the other day. I have the originals with me for the inspection of the committee, but I shall leave copies. These were all brought by me from my court. I shall leave copies, and anybody desiring to test them can do so.

In that original petition, as shown upon its face, the amount of creditors represented by Mr. Benners was something less than \$9,000, embracing in number three creditors. The total indebtedness of this concern—the unsecured indebtedness—was \$2,800,000.

Senator CLARK, of Wyoming. How much was represented by the other attorneys?

Mr. HUNDLEY. I will get right to that. Messrs. Powell & Blackburn, who filed the second petition, represented \$15,000 of indebtedness, and, in number, six creditors.

I present the original petition of Powell & Blackburn, and shall leave a copy for the information of the committee.

Senator CLARKE, of Arkansas. You are not making any reference to petitions that were filed after the receivers were appointed?

Mr. HUNDLEY. No; this is all before. I am commencing right at the beginning. This was all before.

I call attention in this connection to the original petition presented by Mr. Benners, showing there were \$9,000 worth of creditors represented by him when that was filed, and I ask the committee to contrast that with his testimony, in which he said he represented \$300,000 of creditors. I mark this Exhibit 1.

(The petition is as follows:)

Petition for adjudication of bankrupt in the district court of the United States for the Northern District of Alabama, in the southern division thereof, in bankruptcy.

To the honorable OSCAR R. HUNDLEY,

Judge of the District Court of the United States for the Northern District of Alabama:

Petitioners, Birmingham Coal and Iron Company, Sayre Mining and Manufacturing Company, and The Cahaba Coal Company, respectfully show that Southern Steel Company, of the city of Gadsden, County of Etowah, State of Alabama, in said district, has for the six months next preceding the date of the filing of this petition, and prior thereto, had its principal place of business in the city of Gadsden, in the county of Etowah, in said district, and has maintained a general office in the city of Birmingham, in Jefferson County, Alabama; that the said Southern Steel Company owes debts to the amount of \$1,000 and over; that the said Southern Steel Company is a corporation organized under the laws of the State of Alabama, and is engaged principally in manufacturing and mining pursuits; that the creditors of said Southern Steel Company are greatly more than twelve in number; that your petitioners are each creditors of said Southern Steel Company and have claims against it, which amount in the aggregate to over \$500.00; that their said claims are unsecured, and that neither of your creditors is entitled to priority of payment of their said claims within the meaning of section 64 B of the bankruptcy law of 1898 as amended, nor has either of the petitioners received any manner of preference whatsoever within the meaning of any portion of said law; that the nature and amount of your petitioners' claims are as follows:

That of Birmingham Coal and Iron Company is for coal and ore sold to said Southern Steel Company; said claim being in the amount of \$2,319.31.

That of Sayre Mining and Manufacturing Company is for coal and coke sold to said Southern Steel Company; said claim being in amount of over \$5,000.

That of Star Cahaba Coal Company is for coal sold to said Southern Steel Company; said claim being in the amount of over \$1,300.

That within four months preceding the filing of this petition, namely, on October —, 1907, the said Southern Steel Company committed an act of bankruptcy in that it did admit in writing its inability to pay its debts and its willingness to be adjudged a bankrupt on that ground; and that said corporation did in a letter to Sayre Mining and Manufacturing Company, written on, to wit: October 24th, 1907, state, among other things, that said corporation was unable to pay its debts, and was willing to be adjudged a bankrupt on that ground; wherefore your petitioners pray that service of this petition with a subpoena may be made upon said Southern Steel Company as provided by said bankrupt law of 1898 as amended, and that it be adjudged a bankrupt within the purview of such law.

BIRMINGHAM COAL AND IRON COMPANY,
By JAMES BONNYMAN, *Treasurer and General Manager.*
SAYRE MINING AND MANUFACTURING COMPANY,
By JOHN H. ADAMS, *Vice-President and Treasurer.*
STAR CAHADA COAL COMPANY,
By W. G. ROBINSON, *Vice-President.*

Percy & Berner, attorneys for petitioners.

STATE OF ALABAMA,

County of Jefferson, City of Birmingham:

James Bonnyman, being duly sworn, deposes and says that he is treasurer and general manager of said Birmingham Coal and Iron Company, and has personal knowledge of the truth of the statements contained in the foregoing petition, and is duly authorized to make this affidavit and to sign said petition for said Birmingham Coal and Iron Company, and that the statements contained in the foregoing petition are true.

JAMES BONNYMAN.

Subscribed and sworn to before me this 24th day of October, 1907.

J. L. DILLON, *Notary Public.*

STATE OF ALABAMA,

County of Jefferson, City of Birmingham:

W. G. Robinson, being duly sworn, deposes and says that he is president of said Star Cahaba Coal Company, and has personal knowledge of the truth of the statements contained in the foregoing petition, and is duly authorized to make this affidavit and to sign said petition for said Star Cahaba Coal Company; and that the statements contained in the foregoing statement are true.

W. G. ROBINSON.

Subscribed and sworn to before me this 24th day of October, 1907.

J. L. DILLON, *Notary Public.*

STATE OF ALABAMA,

County of Jefferson, City of Birmingham:

John H. Adams, being duly sworn, deposes and says that he is vice-president and treasurer of said Sayre Mining and Manufacturing Company, and has personal knowledge of the truth of the statements contained in the foregoing petition, and is duly authorized to make this affidavit and to sign said petition for said Sayre Mining and Manufacturing Company, and that the statements contained in the foregoing petition are true.

JOHN H. ADAMS.

Subscribed and sworn to before me this 24th day of October, 1907.

J. L. DILLON, *Notary Public.*

Mr. HUNDLEY. I now file the application of these same creditors, through Mr. Benners, filed at that time, requesting the appointment of the two Adlers as receivers. I mark it "Exhibit 2."

(The petition is as follows:)

Petition for receiver in the district court of the United States for the southern division of the northern district of Alabama.

In the matter of Southern Steel Company, bankrupt. In bankruptcy.

To the honorable OSCAR R. HUNDLEY, *District Judge*:

Your petitioners, Birmingham Coal & Iron Co., Sayre Mining and Manufacturing Company, Star Cahaba Coal Company, respectfully show that their petition for the adjudication of the said Southern Steel Company, of the city of Gadsden, county of Etowah, in said district, to be a bankrupt was filed in your honorable court on October 24th, 1907; that such proceeding is still pending and will not be determined for some time; that said Southern Steel Company has for over six months maintained a general office in Birmingham, Jefferson County, Alabama; that said Southern Steel Company is a corporation organized under the laws of the State of Alabama and engaged principally in the business of mining coal and iron ore and in the manufacture of iron and steel; that it owns and operates a steel mill and blast furnaces in the county of Etowah, its principal place of business being in the city of Gadsden, in said county; that it owns and operates a wire and rod mill in the City of Ensley, in Jefferson County, Alabama; that it owns and operates coal mines in Jefferson County, Alabama; that it owns and operates coke ovens in Jefferson County, Alabama; that it owns and operates ore mines in the counties of Etowah and Cherokee, in the State of Alabama; that it owns and operates other mines and properties; that all of said mines and manufactories are going concerns, employing large numbers of men, the number of its employees exceeding one thousand; that the value of its properties approximates the sum of \$10,000,000.

That it is absolutely necessary for the preservation of said estate that a receiver be appointed to take charge of the same, and to manage, control, and operate the same, for the following reasons:

The property of said Southern Steel Company consists of a consolidation of the properties formerly belonging to other corporations and of the stock of other corporations which own mines and furnaces, which properties and stocks are subject to sundry liens and encumbrances; said properties are greatly more valuable in their consolidated form than if held separately. If receivers are not appointed and the property kept together, the foreclosures of subsidiary and other liens will result in the dissipation of said properties.

If the operation of said mines and industries is not continued, the labor and force employed to operate the same will be dissipated, and it will be extremely expensive, if not impossible, on account of the scarcity of labor, to collect another force to operate the same; and the value of said estate will be very much larger if the operation of said mines and industries is continued than it will be if such mines and industries are shut down; the filing of this petition will have the effect of destroying the credit of said Southern Steel Company, and, it having no funds with which to continue its operations, it will suffer large losses on account of its inability to fill existing orders, most, if not all, of which will afford large profits; said estate, consisting as it does, largely of mines and machinery, the same require constant care and attention to prevent deterioration in value. This care and attention the bankrupt will not be able to give it: wherefore your petitioners file herewith the bond of Morris Adler, B. F. Moore, and Sam Adler, as sureties in the sum of fifty thousand dollars, as required by the bankrupt act as a condition to the appointment of said receiver; petitioners further show that it will be for the best interest of said bankrupt and of its creditors that all of its operations, both of its mines and manufactories, be continued until the hearing and decision on the petition for adjudication hereinbefore referred to for the reasons hereinbefore set forth; that no previous application has been made to this or any other court for the order hereinafter asked; that Morris Adler and Edgar L. Adler, of Birmingham, Alabama, are hereby respectfully suggested as suitable persons to be appointed receivers of said estate; that they are men of large means and of excellent financial and business standing in the communities in which said estate is located; that they have great knowledge of and have had wide experience in the management, control, and operation of properties of the kind referred to, and have been extremely successful in the operation and handling of such properties; said bankrupt has little or no cash on hand, such cash as it has being totally insufficient for the purpose of operating said industries.

In order that the operation of said mines and manufactories be continued it will be necessary for the receivers, from time to time, to borrow money with which to continue

such operations; wherefore it is prayed and requested that said receivers be authorized and empowered to borrow a sum not exceeding five hundred thousand dollars, and to issue therefor their certificates as such receivers, which will be a prior lien above all other liens and incumbrances upon said estate; that the wages due the workmen, clerks, and servants of said bankrupt constitute a preferred claim against the estate of said bankrupt, and the same must be paid in order to keep such force of employed together; wherefore your petitioners pray that said persons be appointed receivers herein with power to take charge of and hold said estate and to continue said business and the operation of said mines, manufactories, and industries; and with full power to fill all existing orders for the products of said mines and industries, and with the power to borrow money as aforesaid and to issue certificates therefor; and with power to employ men and means to accomplish the aforesaid purposes; and with power to pay and discharge, out of the funds coming into their hands, all unpaid sums due the workmen, clerks, and servants of said bankrupt; and with such other powers as may be necessary to care for said estate and to preserve its value.

Dated this the 24th day of October, 1907.

BIRMINGHAM COAL & IRON CO.,
By JAMES BONNYMAN, *Treasurer and General Manager.*
SAYRE MINING AND MANUFACTURING COMPANY,
By JOHN H. ADAMS, *Vice-President and Treasurer.*
STAR CAHABA COAL COMPANY,
By W. B. ROBINSON, *President.*

STATE OF ALABAMA,

County of Jefferson, city of Birmingham.

James Bonnyman, being duly sworn, deposes and says that he is treasurer and general manager of said Birmingham Coal & Iron Company and has personal knowledge of the truth of the statements contained in the foregoing petition and is duly authorized to make this affidavit and to sign said petition for said Birmingham Coal & Iron Company, and that the statements in the foregoing petition are true.

JAMES BONNYMAN.

Subscribed and sworn to before me this 24th day of October, 1907.

[SEAL.]

J. L. DILLON, *Notary Public.*

STATE OF ALABAMA,

County of Jefferson, city of Birmingham.

John H. Adams, being duly sworn, deposes and says that he is vice-president and treasurer of said Sayre Mining & Manufacturing Company and has personal knowledge of the truth of the statements contained in the foregoing petition, and is authorized to make this affidavit and to sign said petition for said Sayre Mining & Manufacturing Company, and that the statements in the foregoing petition are true.

JOHN H. ADAMS.

Subscribed and sworn to before me this 24th day of October, 1907.

[SEAL.]

J. L. DILLON, *Notary Public.*

STATE OF ALABAMA,

County of Jefferson, City of Birmingham:

W. G. Robinson, being duly sworn, deposes and says that he is president of said Star Cahaba Coal Co., and has personal knowledge of the truth of the statements contained in the foregoing petition and is duly authorized to sign said petition for said Star Cahaba Coal Co., and is authorized to make this affidavit; and that the statements in the foregoing petition are true.



W. G. ROBINSON.

Subscribed and sworn to before me this 24th day of October, 1907.

[SEAL.]

J. L. DILLON, *Notary Public.*

Mr. HUNDLEY. On the same morning that this matter was before me there was presented the following petition opposing the appointment of the two Adlers, filed by Messrs. Lee J. Marx, F. E. Blackburn, and A. Leo Oberdorfer as attorneys for petitioning creditors named therein, and duly sworn to.

(The petition is as follows:)

In the district court of the United States for the southern division of the northern district of Alabama.

In the matter of Southern Steel Company, bankrupt. In bankruptcy.

To the Honorable OSCAR R. HUNDLEY, *Judge of said Court*:

The petition of Crane Company, a corporation organized and existing under the laws of Illinois, doing business in the city of Birmingham, Alabama, William L. Dellheim & Company, a copartnership composed of W. L. Dellheim and Joseph Wallenstein, of Birmingham, Alabama; the Alabama Paint & Glass Company, a corporation organized and doing business under the laws of the State of Alabama; B. F. Roden Grocery Company, a corporation organized and doing business under the laws of Alabama; Roberts-Johnson and Rand Shoe Company, a corporation organized and existing under the laws of the State of Missouri; Charlotte Supply Company, a body corporate, and Martin Cracker Company, a body corporate, doing business in Saint Louis, Missouri, respectfully represent:

1. That your petitioners are creditors of the above-named bankrupt having provable claims against the testate of the said bankrupt amounting in the aggregate, to wit; fifteen thousand dollars;

2. That on the 24th day of October, 1907, a petition in involuntary bankruptcy was filed by Birmingham Iron Company et als. praying to have the Southern Steel Company, a body corporate, adjudged a bankrupt upon the ground, among other things, that the said Southern Steel Company had admitted in writing its inability to pay its debts and its willingness to be adjudged a bankrupt on that ground;

3. That the estate of said bankrupt consists of steel plants, ore mines, furnaces, coke ovens, manufacturing plants, foundries, and other industries and properties; that your petitioners represent themselves as common creditors not in touch with the alleged bankrupt or the petitioning creditors; that, as appears from the face of said petition, the alleged bankrupt, in a personal letter written to one of the petitioning creditors, expressed its willingness to be adjudged a bankrupt to said creditor, which was an inducement for the said creditor to join in said petition; and petitioners aver that the said petition in bankruptcy is a friendly, if not a collusive, proceeding against the said bankrupt, and that it was thoroughly understood between the said alleged bankrupt and the petitioning creditors that said petition should be filed against said Southern Steel Company and the said petitioning creditors should ask for the appointment of a receiver in said cause.

4. Petitioners aver that at least two receivers should be appointed in said cause, or one receiver who would be thoroughly disinterested and not of the selection of the petitioning creditors or of the bankrupt; that the common creditors and laborers should have some one connected with the proceeding and administration of said estate who would at least look after and protect the interest of all creditors alike, and particularly the interest of the creditors last above named and who are not in the confidence of the bankrupt or the petitioning creditors; that it is absolutely necessary for the preservation of the said bankrupt's estate for a receiver or receivers to be appointed in this cause, to at once take charge of the properties of the bankrupt's estate; that as a matter of fact it would be physically impossible for one receiver to look after and properly seize or take possession of the various plants and industries owned and operated by the alleged bankrupt, and petitioners aver that at least two receivers should be appointed.

Wherefore petitioners pray your honor to appoint a receiver or receivers, with all the powers and authority conferred upon such officers by the acts of Congress relating to bankruptcy, and petitioners pray for such other, further, and different relief as to your honor may seem meet and proper under the averments herein.

LEE J. MARX,
F. E. BLACKBURN,
A. LEO OBERDORFER,

Attorneys for petitioning creditors.

STATE OF ALABAMA, *Jefferson County*:

Lee J. Marx, one of the attorneys of record for the above petitioners, being duly sworn, on oath says that the averments contained in the foregoing petition are true

LEE J. MARX.

Sworn to and subscribed before me this 24th day of October, 1907.

F. M. DONHAM, *Notary Public.*

Senator CLARK, of Wyoming. What is the purport of the objection?
Mr. HUNDLEY. I will tell you right now.

Senator KNOX. What amount of indebtedness did they represent?

Mr. HUNDLEY. Fifteen thousand dollars. These are the same attorneys who filed the second petition, representing creditors, amounting to \$15,000. I leave a copy with a blue pencil around it. In that petition were the following averments, which were called to my attention by these gentlemen the morning Mr. Benners requested the appointment of the Adlers:

3. That the estate of said bankrupt consists of steel plants, ore mines, furnaces, coke ovens, manufacturing plants, foundries, and other industries and properties; that your petitioners represent themselves as common creditors not in touch with the alleged bankrupt or the petitioning creditors; that as appears from the face of said petition, the alleged bankrupt, in a personal letter written to one of the petitioning creditors, expressed its willingness to be adjudged a bankrupt to said creditor, which was an inducement for the said creditor to join in said petition; and petitioners aver that the said petition in bankruptcy is a friendly, if not a collusive proceeding against the said bankrupt, and that it was thoroughly understood between the said alleged bankrupt and the petitioning creditors that said petition should be filed against said Southern Steel Company and the said petitioning creditors should ask for the appointment of a receiver in said cause.

4. Petitioners aver that at least two receivers should be appointed in said cause, or one receiver who would be thoroughly disinterested and not of the selection of the petitioning creditors or of the bankrupt.

On that hearing before me on that morning a most determined and persistent opposition was made by these gentlemen——

Senator CLARKE, of Arkansas. In this connection I think it would make the issue to just quote from their petition. They do not say anything in here about Adler furnishing any money. They say he has plenty of money.

Mr. HUNDLEY. Yes.

Senator CLARKE, of Arkansas. This is the petition of Benners?

Mr. HUNDLEY. Yes.

Senator CLARKE, of Arkansas. Just read the part I have marked. That makes the issue.

Mr. HUNDLEY. I understand from reading Mr. Benners's testimony that he admits on page 219, I think, of his testimony, that there is no one act of the receivers that he can place his hands on as being detrimental to the interest of this estate, and if an impression, says he, has been created that the receivers have done anything to be criticised for, he desires to withdraw it.

Senator CLARKE, of Arkansas. Read that part of the petition originally filed by Percy & Benners.

Mr. HUNDLEY. But his point is that the Adlers had plenty of money to finance it and they wanted to put their funds in it.

That Morris Adler and Edgar L. Adler, of Birmingham, Alabama, are hereby respectfully suggested as suitable persons to be appointed receivers of said estate; that they are men of large means and of excellent financial and business standing in the communities in which said estate is located; that they have great knowledge of and have had wide experience in the management, control, and operation of properties of the kind referred to and have been extremely successful in the operation and handling of such properties; said bankrupt has little or no cash on hand, such cash as it has being totally insufficient for the purpose of operating said industries.

In order that the operation of said mines and manufactories be continued, it will be necessary for the receivers from time to time, to borrow money with which to continue such operations, wherefore it is prayed and requested that said receivers be authorized and empowered to borrow a sum not exceeding five hundred thousand dollars, and to issue therefor their certificates as such receivers, which will be a prior lien above

all other liens and encumbrances upon said estate; that the wages due the workmen, clerks, and servants of said bankrupt constitute a preferred claim against the estate of said bankrupt and the same must be paid in order to keep such force of employed together; wherefore your petitioners pray that said persons be appointed receivers herein with power to take charge of and hold said estate and to continue said business and the operation of said mines, manufactories, and industries, and with full power to fill all existing orders for the products of said mines and industries, and with the power to borrow money as aforesaid and to issue certificates therefor; and with power to employ men and means to accomplish the aforesaid purposes; and with power to pay and discharge out of the funds coming into their hands all unpaid sums due the workmen, clerks, and servants of said bankrupt; and with such other powers as may be necessary to care for said estate and to preserve its value.

Senator CLARKE, of Arkansas. Was that the state of the record at the time you made the appointment of the receivers?

Mr. HUNDLEY. Yes, sir. I have not quite got through with the communications made to me.

Senator CLARKE, of Arkansas. I mean the state of the record.

Mr. HUNDLEY. Yes, sir; that was the state of the record.

Senator CLARK, of Wyoming. What, if anything, developed upon the hearing, with reference to the Adlers furnishing money to carry on the work?

Mr. HUNDLEY. In that hearing there were telegrams filed with me by Mr. Benners from some banks in Birmingham and other people—they are in the record—stating, in effect, that the Adlers were men of financial standing and were able to furnish this money. The telegrams were filed with me by Mr. Benners.

I stayed in my office and gave patient hearing to these gentlemen, not only for fifteen minutes, as Mr. Hood said, but for one hour, until 10 o'clock, when the time for my court to convene arrived, and I sent over and had a recess until 11 o'clock, and notified all the parties that I would make up my mind and announce the decision at 11 o'clock.

In the meantime, I received numerous telegrams and communications by telephone, protesting in the name of creditors against the appointment of the two Adlers. I received a telephone communication from Mr. Schuler; I did not know which one it was, for at time I had never met him. But from the letter on file here I presume it was the E. T. Schuler who testified here. In fact, he met me afterwards and said he was the man. I remember that, now.

Among the representations made to me by telephone was that the Schulers, one of whom was a big stockholder and vice-president of the company, and who was not in harmony with some of the other stockholders, was behind the deal to have the two Adlers appointed receivers, and my attention was called over the telephone to a fact, of which I had knowledge myself—and I have brought the record—that these Schulers, the two brothers, had on a prior occasion, in a suit in the State court involving a part of this identical property—in fact, the parent company which gave birth to the Southern Steel Company (there was a lawsuit between the stockholders and these two Schulers, who owned a large interest in that plant), when an accounting was asked for in the chancery court of the State of Alabama and their books were demanded, and when the sheriff of the county served a subpoena duces tecum upon them, they thereupon immediately took the books and put them in the furnace and burned them up in the presence of the officer to prevent answering the subpoena duces tecum and presenting the books by which—

Senator KNOX. Senator Clark wants to know, and so do I—

Mr. HUNDLEY. All this developed before me.

Senator KNOX. We want to know what developed as to the intention of the Adlers to furnish the money?

Mr. HUNDLEY. This is evidence showing that they were not proper parties, even if they could furnish the money.

Senator CLARK, of Wyoming. What I want to know, and you seem unable, or for some reason you do not give it——

Mr. HUNDLEY. I will give it.

Senator CLARK, of Wyoming. It is because of a misunderstanding, probably. The petition says they are men of means. The statement is made by others than yourself that they stood ready and willing to furnish the means. Now, I want to know what developed in your court at that hearing, if anything, to show that that was their feeling.

Mr. HUNDLEY. Nothing, except the telegrams which were sent and which are in the record.

Senator CLARK, of Wyoming. Are those telegrams from the Adlers?

Mr. HUNDLEY. None of them.

Senator CLARK, of Wyoming. Are they from anybody assuming to act for the Adlers?

Mr. HUNDLEY. Not at all.

Senator KNOX. Do those telegrams say they would furnish the money, or that they were able to furnish it?

Mr. HUNDLEY. That they were able to furnish it.

Senator KNOX. Was any telegram sent to you, or any message, or did you receive from any source, in a way that would control your discretion upon the subject, any information on the point of their willingness to furnish the money?

Mr. HUNDLEY. None from the Adlers, except the statement made by the petition.

Senator KNOX. There is no such statement in the petition.

Mr. HUNDLEY. That is all.

Senator KNOX. The statement is that they are able. That is the point Senator Clark wants to get at.

Senator Clark, of Wyoming. That is it.

Senator KNOX. There is a great deal of difference between a man being willing and a man being able to furnish money.

Mr. HUNDLEY. There was no such statement. Mr. Benners has presented in his testimony the whole record on that question, and all he presented was telegrams from the banks that the Adlers were able to finance this matter.

Senator KNOX. You state flat-footed to this committee that it was not represented to you before you appointed the receivers that if you appointed the Adlers they would furnish the money to keep that plant going?

Mr. HUNDLEY. No, sir; I do not say that.

Senator KNOX. That was not represented to you in any way?

Mr. HUNDLEY. No, sir; it was not represented to me by the Adlers or by anyone in authority. It was represented to me by Mr. Benners, orally. In addition to what was said in the petition, that was represented to me orally.

Senator KNOX. Do you mean when Benners presented the petition, which contains an averment of the ability of the Adlers to furnish

the money, he informed you they would furnish the money if they were appointed?

Mr. HUNDLEY. Yes, sir. He said they would do it. Then it came out—that is why I was getting to this—as to what was the proper thing to do; whether to appoint these men with this averment of collusion on their part with the bankrupt, and in the face of the numerous decisions of the Federal courts that the bankrupt should not be permitted to suggest his receiver or his trustee. I have the decisions here.

Senator KNOX. Let me make a suggestion to you.

Mr. HUNDLEY. Certainly.

Senator KNOX. You have stated to the committee that here was a bankrupt manufacturing plant. Two men had been indicated as proper persons, by reason of their experience and financial ability, to take charge as receivers.

Mr. HUNDLEY. Yes, sir.

Senator KNOX. And it was represented to you that if they were appointed receivers they would furnish money to keep the property going. State to the committee in one, two, three order why you did not, under those circumstances, appoint men who would keep those plants in operation. You must have had some reason, and I think now is the time to state that reason.

Mr. HUNDLEY. I will do that.

Senator KNOX. Do it as concisely as you can. It seems to me you dilute your statements a good deal.

Mr. HUNDLEY. I want to show the men who are behind the Adlers, as showing the collusion. There was an averment of collusion there, and under the decisions I would not have been justified in appointing anybody—

Senator KNOX. Make your argument afterwards, if you insist upon it. State what were the controlling considerations with you which induced you to ignore that proposition.

Mr. HUNDLEY. The controlling considerations with me were, first, the petition of the creditors in the amount of \$15,000, filed at the time of the filing of the petition by Mr. Benners, representing creditors to the amount of \$9,000, averring that this was a collusive and an improper effort on the part of the Adlers to control the estate of the bankrupt for their own purposes. In addition to that numerous telephone messages and telegrams, telephone messages chiefly, protesting against the appointment of the two Adlers for that purpose—

Senator KNOX. Tell us who those messages were from.

Mr. HUNDLEY. One of them was from the firm of Frank S. White & Sons.

Senator KNOX. Are they lawyers?

Mr. HUNDLEY. Lawyers representing creditors.

Senator KNOX. Who else?

Mr. HUNDLEY. Others were from—one of them, another telephone, was from Mr. Webb Crawford, the president of the American Trust and Savings Company, who, I do not think, was a creditor, but was speaking in behalf of friends and creditors who had talked with him about it—who were patrons of his bank.

Senator KNOX. Who else?

Mr. HUNDLEY. In addition to that, my father-in-law, Capt. Frank P. O'Brien, called me up over the phone and said there was a

great deal of feeling in reference to the appointment of the two Adlers; that this was a large estate; and he hoped before I acted upon the matter I would give a very careful consideration to everything and not act hastily.

Senator KNOX. Was he a creditor?

Mr. HUNDLEY. No, sir; simply my father-in-law.

Senator KNOX. He sustained no relation to the property?

Mr. HUNDLEY. No, sir; he called my attention to the situation.

Senator KNOX. That was purely a friendly suggestion.

Mr. HUNDLEY. Yes, sir.

Senator KNOX. Who else?

Mr. HUNDLEY. I can not remember all of those who spoke to me about it. I know there were a number of telephone messages. It was right in the midst of the argument. I had to go to the telephone frequently while they were doing that.

Senator KNOX. You have named the persons and their relations to the property.

Mr. HUNDLEY. Yes, sir.

Senator KNOX. What were the reasons assigned by them why you should not appoint the Adlers? Give that in a little more detail.

Mr. HUNDLEY. I will say I did not know either one of the Adlers. I knew nothing personally about their business capacity. I had known of Morris Adler generally as a general speculator and dealer in stocks and bonds. Edgar Adler I had never heard of.

Senator KNOX. But my question was what were the reasons assigned by the protestants why you should not appoint the Adlers. You say that in these communications which you received they asked you not to appoint them. What reason did they assign for asking you not to appoint them?

Mr. HUNDLEY. Because the Adlers desired to get control of the property for their own personal ends; that they had been in collusion with certain stockholders, and they desired to use it for their own purposes; they desired to get charge of the property; and they had been in consultation with the bankrupt with a view of purchasing the plant; and that they had agreed in advance that they should be receivers; and until they had a proper hearing upon that that I ought not to appoint them.

Senator KNOX. Did you take any steps to verify these statements?

Mr. HUNDLEY. Here is what I did: In the face of all these representations I determined that the proper thing for me to do would be to appoint Edgar Adler, who was shown to be a man of experience, but not to turn it over to both of the Adlers, and to appoint two other men whom I personally knew and in whose integrity I had the highest confidence.

At that same hearing it was urged by Mr. Blackburn and Mr. Powell, for the creditors represented by them, that there were a large number of commissaries, and that some one familiar with commissaries should be appointed.

Senator CLARK, of Wyoming. You mean mine stores?

Mr. HUNDLEY. Yes, sir; stores.

So I then determined, after they all left my office, with these allegations pro and con—all of this was not reduced to writing, in the shape of witnesses on either side; just Mr. Benners's averments and Mr. Powell's and Mr. Blackburn's averments, and the telegrams re-

ferred to me and the telephone messages and things of that kind; it was necessary that the receivers should be appointed at once. So I determined with these two petitions before me and the averments of the two petitions, one asking and the other contesting the appointment, that it was best to appoint the one Adler about whom I had information that he had practical experience, Mr. Edgar Adler, and then, as I say, to appoint two other men in whom I had confidence.

Senator KNOX. What period of time elapsed between the time when this matter was first brought to your attention and the time when you appointed the receivers?

Mr. HUNDLEY. They presented it in my former law office for about one hour. I took one hour then to consider it. I went upon the bench at 11 o'clock and rendered my decision at 11 o'clock. They came there at 9 o'clock; they took one hour to present it, and I took one hour to consider the matter. I went upon the bench at 11 o'clock and made my appointments.

Senator KNOX. Then you had been apprised the evening before that the petition would be presented? It was presented at 9 o'clock in the morning. You had a hearing for an hour and announced the appointments at 11 o'clock?

Mr. HUNDLEY. Yes, sir.

Senator KNOX. You have not said this, but was it generally conceded that there must be a receiver appointed at once?

Mr. HUNDLEY. On both sides. All agreed. The bankrupt—

Senator KNOX. You acted promptly at the request of all the parties and upon all the information you had at that time?

Mr. HUNDLEY. Yes, sir; at that time.

Senator CLARK, of Wyoming. Who were the other two whom you appointed?

Mr. HUNDLEY. I am going to tell you. There was present there every party in interest. Mr. Hood, who testified here, represented the Southern Steel Company, the bankrupt. I should not have appointed anybody upon such a showing as that until I had heard the bankrupt. I would have given notice to the bankrupt. Mr. Hood was there and agreed. I turned to Mr. Hood—one of the attorneys present will remember—and I said, to all parties present, "I understand it is admitted on all hands that this receivership is absolutely necessary at once." Mr. Hood, speaking for the bankrupt said: "There is no question about it. It must be done at once."

Senator KNOX. I do not want you to regard the fact that I have put questions to you as calculated in any way to interfere with the line in which you wish to present this matter. But I have not been present at the prior hearings.

Mr. HUNDLEY. I would much prefer to have you ask questions.

Senator KNOX. I have obtained all the information I want on that subject. Go on and make your statement in your own way. I do not want to shut you off.

Mr. HUNDLEY. You are not shutting me off. Mr. Clark asked who the persons were. Mr. Chandler is a man who has been engaged in the commissary business all his life; the mercantile business. He is a man whom I have known for fifteen years. He is a man of the highest character and integrity. And so I appointed him as one of the receivers.

Mr. J. O. Thompson, whom I appointed, and to whom there has been more objection urged since than otherwise, is a man whom I have known for many years; a man who is my personal friend, it is true; but a man of absolute integrity; a large dealer in real estate; and with these charges before me I preferred to appoint two men who were my friends, in order that the court might be fully advised and apprised of everything that was going on.

Mr. Thompson is also chairman of the Republican State Committee, and he is the collector of internal revenue, and right there I will file with the committee a brief in reference to the contention that the collector of internal revenue is not eligible for appointment as a receiver. I file a brief upon that question. There is no inhibition of the statute or of the law upon that question, and Mr. Pritchard, of North Carolina, has recently appointed the collector of internal revenue of that State to a similar position. I appointed these men solely because I desired men who were my personal friends, in view of these angular statements.

(The brief is as follows:)

THE LAW IN THE CASE.

It has been claimed that the appointment of Hon. J. O. Thompson, collector of internal revenue, as one of the receivers of the Southern Steel Company is in violation of the Federal statute as appears in section 20, volume 29, page 184, United States Statutes at Large. That statute is in the following words, to wit:

That no marshal or deputy marshal, attorney or assistant attorney of any district, jury commissioner, clerk of marshal, no bailiff, crier, juror, janitor of any Government building, nor any civil or military employee of the Government, except as in this act provided, and no clerk or employee of any United States justice or judge shall have, hold, or exercise the duties of the United States commissioner. And it shall not be lawful to appoint any of the officers named in this section receiver or receivers in any case now pending or that may hereafter be brought in the courts of the United States.

It is clear that unless a collector of internal revenue comes within the meaning of "civil * * * employees of the Government," as employed in the first sentence, he does not come within the prohibition of the second.

Before examining the decisions of the United States courts bearing upon analogous questions it might throw some light upon the subject to investigate the meaning of the words "employee" and "officer" as defined by lexicographers and the State courts of last resort. The Century Dictionary says the word "employee" is usually applied only to clerks, workmen, laborers, etc., and but rarely to the higher officers of a corporation or government. Such meaning of the word is approved in *People v. City of Buffalo* (11 N. Y. Sup., 314, 315).

The term "employee" within the meaning of Laws of New York, 1890, chapter 388, providing that every municipal corporation in the State shall pay each and every employee weekly the wages earned by such employee to within six days of the date of payment, does not include a public officer. (*People v. Board of Police*, 75 N. Y., 38.)

The court there said "employees" are usually considered as embracing laborers and servants, and those occupying inferior positions. (*People v. Myers*, 11 N. Y. Sup., 217.)

"Employees," as used with respect to classes of public servants, refers to those whose employment is merely contracted for, and dif-

fers from officers, whose functions appertain to the administration of government. (*Moll v. Sbisa*, 51 La., 290; same case, 25 So. Rep., 141; *State ex rel. Clyatt v. Hocker*, judge 22 South. Rep., 721.)

The officer is distinguished from the employee in the greater importance, dignity, and independence of his position; in being required to take an official oath, and perhaps to give an official bond; in the liability to be called to account as a public officer for misfeasance in office, usually, though not necessarily, in the tenure of his position. (Judge Cooley in *Throop v. Langdon*, 40 Mich., 673, *State v. May*, 106 Mo., 488; same case, 17 S. W., 660; *State v. Johnson*, 123 Mo., 43; same case, 27 S. W., 399; *State v. Shannon*, 133 Mo., 139; same case, 33 S. W., 1137, 1144.)

Turning from the current of outside authority and decisions to the more important ones rendered by the Supreme Court of the United States, it may be observed at the outset that this highest of all judicial tribunals has construed all acts of Congress restricting eligibility to the public service very strictly and has uniformly held that a person is not excluded unless he necessarily comes within some positive statutory prohibition. So when the court comes to construe section 2 of the act of June 3, 1896 (38 Stat. L., 205), which reads as follows—

SEC. 2. (Holding more than one office.) No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to hold any other office to which compensation is attached unless specially heretofore or hereafter specially authorized thereto by law; but this shall not apply to retired officers of the Army or Navy whenever they may be elected to public office or whenever the President shall appoint them to office by and with the advice and consent of the Senate.

it held that it had no application to two distinct offices, places, or employments, each having its own duties and compensation, and that such offices might both be held by one person at the same time. (*United States v. Saunders*, 126 U. S., 128.)

The case of *United States v. Germaine* (99 U. S., 508) presented the question of whether or not a surgeon appointed by the Commissioner of Pensions to examine pensions and applicants for pensions, and who was paid by the Government for his services in such employment, was an officer of the United States. It was held that he was not. The question I am discussing was treated, both by court and counsel, in that case, as not an open one. I copy from the body of the opinion:

Every officer of the United States who is guilty of extortion under the color of his office shall be punished by a fine of not more than \$500, or by imprisonment not more than one year, according to the aggravation of his offense.

The indictment being remitted into the circuit court, the judges of that court have certified a division of opinion upon the questions whether such appointment made defendant an officer of the United States within the meaning of the above act, and whether, upon demurrer to the indictment, judgment should be rendered for the United States or for the defendant.

The counsel for the defendant insists that Article II, section 2, of the Constitution, prescribing how officers of the United States shall be appointed, is decisive of the case before us. It declares that "The President shall nominate and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for and which shall be established by law. But Congress, may by law, vest the appointment of such inferior officers as they may think proper in the President alone, in the courts of law, or in the heads of the Departments."

The argument is that provision is here made for the appointment of all officers of the United States, and that defendant, not being appointed in either of the modes here mentioned, is not an officer, though he may be an agent or employee working for the Government and paid by it, as nine-tenths of the persons rendering services to the Government undoubtedly are, without thereby becoming its officers.

The Constitution, for purposes of appointment, very clearly divides all its officers into two classes. The primary class requires a nomination by the President and confirmation by the Senate. But, foreseeing that when officers became numerous and sudden removals necessary, this mode might be inconvenient, it was provided that, in regard to officers inferior to those specially mentioned, Congress might by law vest their appointment in the President alone, in the courts of law, or in the heads of the Departments. That all persons who can be said to hold an office under the Government about to be established under the Constitution were intended to be included within one or the other of these modes of appointment there can be but little doubt. This Constitution is the supreme law of the land, and no act of Congress is of any validity which does not rest on authority conferred by that instrument. It is, therefore, not to be supposed that Congress, when enacting a criminal law for the punishment of officers of the United States, intended to punish anyone not appointed in one of these modes. If the punishment were designed for others than officers as defined by the Constitution, words to that effect would be used, as servant, agent, person in the service or employment of the Government; and this has been done where it was so intended, as in the sixteenth section of the act of 1846, concerning embezzlement, by which any officer or agent of the United States and all persons participating in the act, are made liable. (9 Stat. L., 59.)

This case is expressly affirmed in the later case of *United States v. Mouat* (124 U. S., 303), where the court said:

What is necessary to constitute a person an officer of the United States, in any of the various branches of its service, has been very fully considered by this court in *United States v. Germane* (99 U. S., 508—25, 482). In that case it was distinctly pointed out that, under the Constitution of the United States, all its officers were appointed by the President, by and with the consent of the Senate, or by a court of law, or the head of a Department; and the heads of the Departments were defined in that opinion to be what are now called members of the Cabinet. Unless a person in the service of the Government, therefore, holds his place by virtue of an appointment by the President or one of the courts of justice or heads of Departments authorized by law to make such appointment, he is not strictly speaking an officer of the United States.

We do not see any reason to review this well-established definition of what it is that constitutes an officer.

Mouat's case is reaffirmed in the still later case of *United States v. Smith* (124 U. S., 525).

In *American and English Encyclopedia of Law* (p. 382 et seq.) the various definitions and essential elements of the term "office," as given in the cases cited and others, is very aptly and correctly summarized as follows:

The term "office" implies a delegation of a portion of the sovereign power to, and possession of it by, the person filling the office, a public office being an agency for the State, and the person whose duty it is to perform the agency being a public officer. The term embraces the idea of tenure, duration, emolument, and duties, and has respect to a permanent public trust to be exercised in behalf of government, and not to a merely transient, occasional, or incidental employment. A person, in the service of the Government who derives his position from a duly and legally authorized election or appointment, whose duties are continuous in their nature, and defined by rules prescribed by Government, and not by contract, consisting of the exercise of important public powers, trusts, or duties, as a part of the regular administration of the Government, the place or duties remaining though the incumbent dies or is changed, is a public officer, every "office" in the constitutional meaning of the term implying an authority to exercise some portion of the sovereign power, either in making, executing, or administering the laws. (Mechem, Pub. Off., 1-9, inclusive, and citations.)

These annunciations leave no doubt as to the official status of a collector of internal revenues. If he were not designated by Congress an officer, the method of his appointment, the tenure of his office, and the character of his duties would make him so under the Constitution of the United States as interpreted by the United States Supreme Court. But Congress has, in providing for his appointment under the

Constitution, expressly designated him as an "officer." Section 3142 of the Revised Statutes reads as follows:

Sec. 3142. (Collectors.) The President, by and with the advise and consent of the Senate, shall appoint for each collection district a collector, who shall be a resident of the same. When two or more collection districts are united by him, he may designate from among the existing officers of such districts one collector for the new district, or, at his discretion, he may make a new appointment of such officer for said district.

Other sections provide for his bond, his salary, his accounts, appointment by him of his deputies, vacancies in his "office," and so on, treating him throughout as an important officer of the Government in charge of an organized force of employees within certain defined territory. It necessarily follows that he is not an "employee" within the meaning of the first sentence of section 20 supra.

Although I have given the weight of the opinion of judges and the authority of the Century Dictionary in support of the conclusion reached, it is hardly necessary to go outside of the words of section 20 to satisfy the mind of the exemption of a collector of internal revenue from its provisions. The first sentence enumerates certain officers and other persons in the service of the United States, and then adds "employee." If the words "and civil or military employee of the Government" included officers such words alone would have been used. There would have been no enumeration. It was not intended in the last sentence to embrace all the persons named in the first. Certain officers are enumerated in the first. Collectors of internal revenue are not among the "officers" named. As only the "officers" enumerated in the first sentence are excluded by the last from eligibility to appointment as receivers of courts of the United States, collectors of internal revenue are not within the excluded class. And there are the best reasons why the National Legislature made no prohibition against them, viz, the discharge of said duties of their office is not incompatible with, or likely to conflict or interfere with, their duties as receivers.

Mr. HUNDLEY. This chain shows the conduct of the Schulers and the two attorneys who appeared—

Senator CLARKE, of Arkansas. I suggest that you complete your statement about Thompson and his qualifications and standing down there, and the reason why you thought he was a proper man to appoint.

Mr. HUNDLEY. Because Mr. Thompson was a man who had been successful in large dealings in real estate. The other day I presented the whole record in reference to the debt which he owed me. Mr. Thompson was a large dealer in real estate. He now owns some 25,000 or 30,000 acres of land. Is there any use for me to go into that?

Senator CLARKE, of Arkansas. Oh, no.

Senator KNOX. Not if it is in.

Senator CLARKE, of Arkansas. What about his personal qualifications as a receiver?

Senator KNOX. Is Mr. Thompson a lawyer?

Mr. HUNDLEY. No, sir; neither is either of the Adlers a lawyer; and the creditors, in electing the trustees, have elected only one expert, one banker, and one merchant. Inasmuch as I had appointed Mr. Adler, who was an expert, I desired, as I say, these other two men.

The bond as fixed by my decree and by agreement with Mr. Benners was \$300,000. That was to be a joint bond, at Mr. Benners's suggestion. It was put in there to be a joint bond of \$300,000, to be made by all the three receivers, saying that would be all that would be necessary.

As soon as they got to Birmingham I received a telegram from Mr. Edgar Adler, stating that he had made his bond of \$300,000; that he personally had made it. In a day or two—I do not remember exactly the time—I received notice—I will further say that at the time I appointed the receivers it was represented to me by some one of the bankers—I think Mr. Crawford—that the banks would loan a reasonable amount on the receivers' certificates that I would authorize; that the receivers' certificates, it matters not by whom issued, to keep the plant a going concern, if issued, would be taken by some of the banks there.

I ought to state right here, in addition to that, that Mr. Benners alludes in his testimony to my having received a telegram which was sent to him. That is a fact. It was while I was considering the appointment of these receivers during that hour between 10 and 11. Many telegrams came in, and my secretary—I was sitting at my desk looking over papers—opened all the telegrams. One of the telegrams which he opened had Mr. Benners's name up in the printed part. He explained that to me afterwards. I never knew it until it was called attention to in court. It was addressed to A. Benners, and right under that, "Care Judge Oscar R. Hundley." My secretary did not see the name Benners. Mr. Benners stated that I had denominated that telegram as an insult to the court. He is in error about that. That telegram was from Morris Adler, stating that he would not act as receiver with anybody except his brother Edgar, showing further to my mind at that time the determination of the two Adlers to get control of the estate.

Immediately on his executing his bond separately from the other two receivers, Messrs. Thompson and Chandler had made arrangements, so they informed me, to borrow sufficient money from the banks, and had the promise of it, to be loaned on the receivers' certificates, to do whatever was necessary to keep the plant a going concern, if they thought proper. But they advised me over the telephone that on account of Mr. Adler having executed a separate bond from them and antagonizing them the banks had declined to loan the money on receivers' certificates on account of the friction among the receivers.

They then filed a petition, which was brought before me five or six days afterward. The petition shows for itself. They gave notice to Mr. Adler. It was heard before me at Huntsville, Ala. They stated that on account of this friction it was impossible to negotiate the receivers' certificates; that unless harmony prevailed among the receivers it was impossible to go ahead in that way. Mr. Walker Percy called me over the telephone and stated to me: "I understand there is going to be an effort to remove Adler. I trust you will not do that. You must make them get together. They ought to do it. Adler is doing wrong in this matter and I trust you will not remove him, but make the receivers get together and manage this estate. If you remove Adler, it will be a slap in my face," said Mr. Percy. "Please do not remove him."

When it came on to hearing that night at my chambers Mr. Edgar Adler was there. Mr. Schuler was there.

Senator KNOX. How long was this after the appointment?

Mr. HUNDLEY. Five or six days after the appointment. The other hearing was on the 25th and this was on the 30th, Mr. Wood tells me. It was five days afterwards. It was heard before me in chambers.

I called upon each one of the receivers to know what was the trouble. Mr. Chandler and Mr. Thompson stated that there was want of harmony among the receivers, so much so that they could not negotiate the receivers' certificates.

I then put Mr. Adler upon the stand and I said to him, "Now, Mr. Adler, I see that a great deal has been said about the two Adlers furnishing the money." This is all in the record, in the evidence. "I want to ask you now—I appointed you as one of the receivers—are receivers' certificates issued by authority of this court, signed by Thompson, Chandler, and Edgar Adler, not just as good and with as much authority as receivers' certificates issued by the two Adlers?" He said, "Yes, sir." Then I said, "I want to ask you now"—this was only five days after the receivers were appointed—"if it is to the interest of this estate to keep this a going concern, I want it kept up, in the interest of everybody concerned. I want to ask you now, will you under any circumstances, or will the firm of Adler Brothers—yourself and Morris Adler—put up sufficient funds to carry on these plants?"

Senator KNOX. Were the plants in operation at that time?

Mr. HUNDLEY. They were partially in operation. As to what extent I have no actual knowledge.

Senator CLARKE, of Arkansas. I think that is in the record.

Mr. HUNDLEY. It may be in the record. Colonel Bush told all about that. Anyhow, they had not all been closed down. So we said, "No, sir; we can not do it." I said, "Why can you not do it?" He said, "Because the financial condition is such that it is absolutely impossible for us to do it; and, furthermore, if we had the money we would not put it into this matter to keep those plants going." Mr. Schuler, who was then in the audience, got up and addressed me and said, "If your honor will give us about fifteen minutes I think we can arrange it so that we can get the funds." I said, "All right, Mr. Schuler, I will give you the opportunity." He consulted with some one whom he had with him. I do not know who it was. I believe it was Mr. Lacey. Then he said, "If your honor please, we can not do it. Go ahead."

I had already been in telephonic communication with Mr. T. G. Bush, of Birmingham, Ala., a man who is known from one end of the State of Alabama to the other. He is a man of the highest character and a man who, as his own testimony shows, has had seventeen years' experience in the management of properties of this sort. I called him by telephone without suggestion from anybody, directly or indirectly, simply because I knew the man's character and fitness. I asked him if I would add him or appoint him to the board of receivers would he act. He said, "I have told Mr. Thompson that if I could do anything to help the matter out I would be willing to serve." He said, "I have given Mr. Thompson some sort of a letter"—I have forgotten what—"to that effect."

After Mr. Schuler declined to do anything further I said "Well, gentlemen, I am going to appoint Col. T. G. Bush, of Birmingham, Ala., as another receiver of this concern. I know he knows all about this kind of business, and I want to ask all present if they have any objection to urge to the appointment of Mr. Bush." Nobody said anything. I turned to Mr. Edgar Adler. I said: "Mr. Adler, have you anything to say against the appointment of Mr. Bush as an additional receiver?" He said: "Nothing on earth." Mr. Bush is a man of the highest character and a man of capacity and experience in this line of business."

I then turned to Mr. Chandler and to Mr. Thompson and said: "Gentlemen, have you anything to suggest?" They said they had not. Then I said: "I will appoint Col. T. G. Bush as another receiver." But, I said: "Before I do that I want to hear from each one of the receivers. I want to know now if the business of this concern will go on harmoniously, or if there will be further friction, and I want to hear especially from Mr. Adler." He got up and said: "If your honor please, Mr. Bush is entirely satisfactory so far as we are concerned, and I promise you now there will be no further friction in this matter."

I appointed Colonel Bush, and I heard nothing more from it. Mr. Benners was in court when I made the first two appointments. No exceptions were made, directly or indirectly. I have never to this day heard anything urged in reference to the character or manner in which the estate has been managed. The records of my court will show that no exceptions or objections have been made.

The receivers on the 13th of December made their report to the court. At that meeting all of the creditors were represented or had an opportunity to be represented and that report was signed by Bush, Adler, Thompson, and Chandler, all four of them. It was a unanimous report. No exceptions were ever made to that report, directly or indirectly, to my knowledge. The records of the court do not show any exceptions.

Now, Mr. Benners says something about delaying this matter. Mr. Wood, the special master, who had in charge all these matters, can make a better statement about that and the routine of the matter than I can. The records will show that the very minute a proposition was presented to me, of which all parties in interest had notice and an opportunity to be heard, that that very day or the day afterwards I rendered a decree.

Senator KNOX. Was there ever any attempt to negotiate receivers' certificates?

Mr. HUNDLEY. I gave authority for the negotiation of receivers' certificates, and I was under the impression at the time I wrote the last decree I had written that Colonel Bush had negotiated those certificates, because I had signed a decree authorizing the negotiation of them and had sent a copy to the banker who was to furnish the money, at his request, stating that he would furnish the money. But Colonel Bush has stated here the other day—it was the first time that I had heard of it, because I have been too busy to pay any attention to the workings of the matter; I have paid attention only to such matters as were brought before me—Colonel Bush stated that he did not negotiate the certificates. I believe that is his testimony, because it was unnecessary; because they found \$8,000 in the funds of the company and that they had kept all the plants running which *could be run at a profit.*

Senator KNOX. In other words, he did not find any commercial necessity for it?

Mr. HUNDLEY. That is right. They did not find any commercial necessity for it, and he left the plant with \$100,000 in cash. He found he could not run them successfully and profitably. I signed a decree authorizing certificates, but I am informed that he did not use them, and the bank which had agreed to furnish the money wrote me to send them a copy of the decree, which I did, and they acknowledged the receipt of it.

Another thing right here in reference to the appointment of these receivers. Mr. Hood, in his testimony—I think I have the exact page; never mind; I can not recall the page; I will state what it is—Mr. Hood mentions the various objections to Thompson and Chandler, and in addition to that he says that I was at that time living with my family in Chandler's residence.

Senator CLARKE, of Arkansas. He said you were living together in the same house.

Mr. HUNDLEY. Living together in the same house.

Senator CLARKE, of Arkansas. He did not say whether he was living with you or you were living with him.

Mr. HUNDLEY. That we were living together in the same house. Gentlemen, I never in my life spent a day under the roof of Mr. Chandler, nor did he ever spend a day under my roof, until the 13th day of December, 1907, more than a month after the receivers were appointed.

I present in this connection the affidavit of Mr. Chandler, and the checks paid Mr. Chandler's wife, for board:

Statement of E. G. Chandler, of Birmingham, Ala., made for filing with the subcommittee of the Senate Committee on the Judiciary in the matter of hearing as to the confirmation of Judge Oscar R. Hundley.

¶ Judge Hundley and his wife arrived at my home on December 12, 1907, and on that day arranged to board there until his residence was completed in said city, at two and 50/100 dollars per day. Their board was paid to my wife as it became due. The checks in payment of such board dated, December 26, 1907, and February 3, 1908, are in the possession of Judge Hundley. Judge Hundley was not living or boarding at my house at the time I was appointed one of the receivers of the Southern Steel Company on October 25, 1907, nor did he ever live or board there until December 12, 1907.

E. G. CHANDLER.

Sworn to and subscribed before me this 11th day of February, 1908.

[SEAL.]

H. J. KING, Jr.,
Notary Public.

Commission expires January 28, 1911.

BIRMINGHAM, ALA., December 26, 1907. No. 52.

AMERICAN TRUST AND SAVINGS BANK, OF BIRMINGHAM, ALA.:

Pay to the order of Mrs. E. G. Chandler (\$38) thirty-eight dollars.

OSCAR R. HUNDLEY.

Indorsed: Mrs. E. G. CHANDLER.
JESSE F. YEATES.

BIRMINGHAM, ALA., February 3, 1908. No. 68.

AMERICAN TRUST AND SAVINGS BANK, OF BIRMINGHAM, ALA.

Pay to the order of Mrs. E. G. Chandler (\$55) Fifty-five dollars.

OSCAR R. HUNDLEY.

Indorsed:

Mrs. E. G. CHANDLER.

Both checks stamped "Paid."

Mr. HUNDLEY. Since they have gotten down to such small things, I will state the facts about it. Pending the building of my residence in Birmingham, I was living at the Hillman Hotel. Mrs. Hundley was a schoolmate of Mr. Chandler's wife. Mrs. Hundley got tired of living at the hotel. I requested her to find a boarding house. She mentioned the matter to Mrs. Chandler, and Mrs. Chandler said, "You can board with us for the little time you will be in Birmingham." I had four places in which I held court, and could not be in Birmingham very much. I have presented the checks paid to Mrs. Chandler for the board, and the affidavit of Mr. Chandler in contravention of Mr. Hood's testimony. It shows that I never began to board with him until the 13th day of December. I may not have the exact time, but that is about the time.

Furthermore, to show that I was not living in the same house with him at the time he was appointed, I may say that I was at that time in Huntsville, Mr. Chandler being in Birmingham at his residence. I was then temporarily residing at my former residence in Huntsville, Ala., my residence in Birmingham not having been completed.

After the appointment of these receivers I was assigned to hold court in Florida. After completing my term of court at Huntsville, I left and went to Anniston; held one week of court there; was relieved by Judge Shephard, and then went on directly to Florida. I held court for two weeks in Pensacola and one week in Tallahassee, and on my return to Birmingham in December—the 13th, I believe, was the day—I began to board with Mr. Chandler, under those circumstances.

Mr. Benners in his testimony detailed a conversation which he says he had with me in my chambers in Birmingham. In that conversation he stated that I notified him that I would be judge until the 4th day of March, 1909, and would have the decision of all these questions in reference to the Southern Steel matter.

Mr. Benners is absolutely mistaken. I have no hesitancy in telling you what the conversation was. Mr. Benners came to my chambers a short time before we came up here. There had been numerous attacks upon me through the Gadsden Times News, a paper of which Mr. O. R. Hood was part owner, and whose name appears at the head of the editorial column as vice-president or president of the publishing company. Mr. Benners said to me, "I want to assure you, judge, that I have nothing on earth to do with these attacks on you;" and I said, "Well, Mr. Hood has written me a letter stating that he wanted to assure me that he had nothing to do with it, too;" and he said, "Well, that was very proper for Mr. Hood to write you that letter, because his name appears as one of the owners of that paper. But I want to tell you that we have too many interests involved to take part in political matters. This fight upon you we recognize as entirely political, and I want to assure you that I have taken no part in it, directly or indirectly, nor shall I take part in it." I replied to him, "Well, Mr. Benners, I am very glad you stated that; very glad indeed."

Now, in this connection, Mr. Hood introduced in his testimony this letter that he wrote to me. He wrote two letters. He said he was afraid I would commit him for contempt. I never, directly or indirectly, intimidated, that I know of, that I would do anything of that sort. All the conversation I had with Mr. Hood's partner was that he came into my chambers, and I laughingly said to his partner, Mr.

Murphree, who is a very good friend of mine, "How are you gentlemen getting along now, trying your case in the newspapers?" He said, "Well, judge, I do not know anything about that." I said, "I did not suppose you did." He left, and Mr. Hood of his own motion wrote me this letter. And in that letter he stated, as justification of the article, that a good deal of it had been copied from the Birmingham News. I replied to him that I was glad to have his letter; that it was satisfactory to me, entirely; that being an attorney before my court I did not think it would be proper for him to go into the newspapers, but I was glad to have his statement. I wrote him a courteous letter, which I believe he has put into the record.

I told him, however, about the charges having been in the Birmingham News; that he was in error about it. He wrote me a second letter, which he has put into the record. I wish to call the attention of the committee to the language of the second letter. In it he states in substance—the letter is in the record—that he knew at the time that there was opposition made to the appointment of the two Adlers. I ask the committee to read that letter of Mr. Hood, and I shall file the original as an exhibit. He stated that he knew at the time there was opposition to the appointment of the two Adlers, and if I had reason to believe from representations made before me, or feared, even, that the Adlers were not the proper parties to appoint, I did exactly right in not appointing them. That is the Mr. Hood who testified here. I shall file the original letter. That is the substance of it. The letter is the best evidence.

Senator CLARKE, of Arkansas. Is it a different letter from the two he has filed?

Mr. HUNDLEY. No; it is one of those two, and in that you will find that expression. I thought I would leave the original here. It is one of the two. It is the last letter, in which he said that I did exactly right; if I feared that the Adlers were not the proper parties to appoint, from the evidence before me, that I should not appoint them.

Another matter I desire to call to the attention of the committee is Mr. Benners's statement, after he had been recalled I think the third time, that I put in the decree appointing the receivers a provision that they should remain in possession of this plant for six months. Mr. Campbell, who is present, and who was one of the attorneys representing the receivers, as Mr. Benners was, will bear me out that, after the arguments before me and the statement of what the receivers all desired, I turned to all the counsel—Mr. Benners, Mr. Campbell, and Mr. Dryer—and told them, as is usually customary with the court, especially the court being right then in session and on the trial of a case, "Gentlemen, prepare your decree, and I will sign it in accordance with what we have agreed upon in open court." That was that night after the hearing.

I left them in my chambers. The last man I saw writing on the decree was Mr. Benners himself.

I went into the room adjoining my chambers, and in the course of a short time Mr. Campbell, or Mr. Dryer—I do not remember which—brought me the decree and said, "Judge, here is the decree." I looked at it and found it greatly interlined. I said, "Gentlemen, I do not like to sign a decree interlined in this manner." They said: "Judge, we are going to leave on the train now—on the 10 o'clock train—in a

minute, and we do not want to miss it. You may do this. You sign this decree with these interlineations. We will take it to Birmingham, and we will write it there on the typewriter, and then send you back the original decree with the interlineations and the typewritten decree." That decree had in it at that time the six months' provision, which was placed therein by the attorneys. I asked all three of the attorneys if there was any objection to the decree from any source.

Senator KNOX. What significance is attached to that?

Mr. HUNDLEY. Mr. Benners endeavored to make it appear that I put in the decree a provision that the receivers should remain in office six months, in order to keep the receivers whom I had appointed in power that long.

Representative RICHARDSON. I think Mr. Benners's statement should be allowed to speak for itself, rather than to be explained by Judge Hundley's statement.

Senator KNOX. I had not heard Mr. Benners's statement.

Mr. HUNDLEY. He called special attention, when he was recalled, to the fact that I had included that provision therein. I want to tell the facts in reference to it. That is my purpose in stating that. I did not know that it was in the decree until it was presented to me, and I then asked all the attorneys present if there was any objection to the decree, and I was informed that there was not. No objection, at least, was made.

Senator CLARKE, of Arkansas. Mr. Benners does not say that he protested against it.

Mr. HUNDLEY. No, sir.

Senator KNOX. Personally, I do not see that it made any difference. The court could have changed the decree at any time. He could have enlarged it or contracted it.

Mr. HUNDLEY. Certainly. I could have changed it at any time. I have to controvert these statements of the witnesses. If I do not, I will not get the reply upon the record,

I want to file here as exhibits—it is a matter that was called to my attention at the time the appointment of the receivers first came up—the proceedings in contempt with respect to the Schulers for burning the books and also their statement in reference to it.

Senator CLARK, of Wyoming. When was that done?

Mr. HUNDLEY. Some time before. It was about this same property.

Senator CLARK, of Wyoming. What is the purpose of the introduction of those papers—to discredit the Schulers?

Mr. HUNDLEY. They were among the men urging the appointment of the Adlers, and my attention was called to the fact—

Senator CLARKE, of Arkansas. There is a letter here from Mr. Schuler containing a most definite and vigorous protest.

Mr. HUNDLEY. The Schulers were among the people who were urging the appointment of the Adlers, and for that reason creditors were asking me not to appoint the Adlers, on account of their record in this proceeding.

Senator CLARK, of Wyoming. What was done with the Schulers for burning, in the presence of the officer, the books which were subpoenaed?

Mr. HUNDLEY. They were committed for contempt by the chancery court, and when they came to serve out the sentence physicians

appeared before the court and showed that their two wives were in a delicate condition, and on that account it might result seriously if they were confined in jail; and the record which I present shows that that was continued over and suspended temporarily all along, and in the meantime Schuler got into communication with C. E. Robinson, the other party to the litigation, and came forward and stated to the court that he had the books all rewritten, as much as he could from memory, and that it was satisfactory to this man Robinson, and asked that he be not required to serve out the sentence, and Robinson consented to it, Robinson having been paid fifty to seventy-five thousand dollars.

Senator CLARK, of Wyoming. That is a great way to reproduce a set of books.

Mr. HUNDLEY. I am giving you the record. That is shown by the record there. I mention it because Schuler's letter is on file here, and those objections were called to my attention at the time.

(The papers referred to are as follows:)

State ex rel. C. E. Robinson v. E. T. Schuler et al. In the city court of Birmingham, Ala.

To GEORGE H. SCHULER,

Secretary and Treasurer of the Alabama Steel and Wire Company:

You are hereby notified and required to have and produce at the hearing of this proceeding, in the city court of Birmingham, at 9.30 o'clock a. m. on Saturday, January 25, 1902, before Hon. W. W. Wilherson, judge of said court, the following books of the Alabama Steel and Wire Company, in your possession or under your control as such secretary, to-wit: The letter books of said Alabama Steel and Wire Company, in which letters sent out from the office were copied, No. 9, No. 11, No. 12, and No. 13, respectively.

This 24th day of January, 1902.

CAVANNIS & WEAKLEY,
Attorneys for Petitioner C. E. Robinson.

The State of Alabama, Jefferson County. City court of Birmingham.

To the SHERIFF of JEFFERSON COUNTY:

Whereas Everett T. Schuler and George H. Schuler have been each by this court adjudged to be guilty of a contempt of this court in that they did each willfully disobey an order of this court made on June 26, 1901; and whereas they have each been sentenced by this court to pay a fine of 50 dollars to the State of Alabama and each to undergo an imprisonment in the county jail at Jefferson County for five days from this date. Now, this is to command you that you take into your custody the said Everett T. Schuler and George H. Schuler and imprison them in said county jail for five days from this date, this day being counted as the first of said five days.

This 5th day of February, 1902.

(Signed)

WM. W. WILKERSON,
Judge, etc.

¶ Upon application of respondents, Everett T. Schuler and George H. Schuler, and because of illness in the family of one of them, it is ordered by the court that the execution of this order be suspended until Wednesday, the 12th day of February, 1902, at 12 o'clock noon, at which time it is ordered by the court that the sheriff will proceed with its enforcement, and imprison said Everett T. Schuler and George H. Schuler in the county jail in and for said county for five days from that date, counting said day, February 12, as one of such five days, and discharge them at 12 o'clock noon on Saturday, February 16, 1902.

This 5th day of February, 1902.

(Signed)

WM. W. WILKERSON,
Judge, etc.

Upon application of the respondents, Everett T. Schuler and George H. Schuler, and because of the continued illness of Mrs. E. T. Schuler and Mrs. George H. Schuler, it is ordered by the court that the execution of the within order be further suspended until Wednesday, the 26th day of February, 1902, at 12 o'clock noon, at which time it is ordered by the court that the sheriff will proceed with its enforcement and imprison the said Everett T. Schuler and George H. Schuler in the county jail in and for the said county for five days from that date, counting said day February 26, 1902, as one of such five days, and discharge them at 12 o'clock noon on Sunday, March 2, 1902.

This the 12th day of February, 1902.

(Signed)

WM. W. WILKERSON,
Judge, etc.

Upon the application of respondents, Everett T. Schuler and George H. Schuler, and because of the continued illness of Mrs. E. T. Schuler and Mrs. George H. Schuler, it is ordered by the court that the execution of the within order be further suspended until Wednesday, the 12th day of March, 1902, at 12 o'clock noon, at which time it is ordered by this court that the sheriff will proceed with its enforcement and imprison said Everett T. Schuler and George H. Schuler in the county jail in and for said county for five days from that date, counting said day, March 12, 1902, as one of said five days, and discharge them at 12 o'clock noon on Sunday, March 16, 1902.

(Signed)

WM. W. WILKERSON,
Judge, etc.

The State of Alabama, Jefferson County. City court of Birmingham.

I, John S. Gillespy, clerk and register of said city court of Birmingham, in and for said State and county, do hereby certify that the foregoing pages numbered one and two, respectively, contain a full, true, and correct copy of the orders of said city court of Birmingham in re the contempt proceeding of Everett T. Schuler and Geo. H. Schuler in the cause of the State of Alabama ex rel. C. E. Robinson and E. T. Schuler and Geo. H. Schuler as appears of record of said court, bearing date of filing 12th day of March, 1902.

Witness my hand and seal of said court January 28, 1908.

JOHN S. GILLESPY,
Clerk and Register.

C. E. Robinson ex rel. v. E. T. and George H. Schuler. In the city court of Birmingham, Ala.

To the honorable WM. W. WILKERSON, *Judge of said Court:*

E. T. and George H. Schuler, defendants in the above-entitled cause, now come and respectfully ask that the judgment of this court heretofore rendered against them in said cause be modified to the extent that the imprisonment of these defendants in the county jail be remitted; and for grounds of this application, these defendants state the following facts, to wit:

That since said judgment was rendered these defendants have employed expert bookkeepers for the purpose of reconstructing the books which were destroyed, and these experts have been almost continuously engaged in said work for a considerable length of time, and they have substantially completed said work, and have reestablished said destroyed books, and that this was done from original items and matter in the files and keeping of said company; that the items which made up the balances carried forward on the new books have been found from said original matter, that is from the undestroyed books and papers and vouchers of the company, and these show said balances to be correct, except in two particulars: One involving an item of six dollars and the other involving an item of three hundred and some odd dollars; and the latter item is correctly shown by the papers of the company, but it has not yet been ascertained to what account said item should be credited; and such last item is an item of receipt by the company and not a disbursement.

That since said judgment was rendered a full, fair, and complete settlement has been made by these defendants with the said C. E. Robinson of all matters of controversy between them, including the matters of controversy out of which said contempt proceedings grew; and that in the judgment of your petitioners the said C. E. Robinson has been in no way influenced to make said settlement by any disadvantage he had been placed by the destruction of said books; but, on the contrary, as these defendants believe, the said C. E. Robinson has obtained from the books of said company

all the information that he needed to fully advise him of his rights in the company and of the condition of the company.

That these defendants repeat what they said in their answer to the petition filed in this cause, and that is that in what they did they were not influenced by any feeling of disrespect for this honorable court or with a purpose to disregard its orders or judgment.

In consideration of the premises, and with the belief that the ends of justice have been substantially met, these defendants respectfully pray this honorable court that said judgment against them may be modified as hereinbefore suggested.

All of which is most respectfully submitted.

E. T. SCHULER.

G. H. SCHULER.

Sworn to and subscribed before me this 12th day of March, 1902.

FRANK W. SMITH, *Notary Public*.

Mr. HUNDLEY. I then went down to Florida, and left a special master. I will say this: Mr. Thompson knew absolutely nothing about my selecting him. He did not know I had any such purpose in view. He was not at home when I appointed him. I did it on my own authority and because I knew the man personally, and then, in addition to that, because of the representations and requests made to me by creditors represented by Frank White & Sons.

Senator CLARKE, of Arkansas. Where is Mr. Thompson's home in Alabama?

Mr. HUNDLEY. Birmingham.

A political significance has been attempted to be made in reference to my appointment of Mr. Thompson. I will say that politics had absolutely nothing to do with it. He was the only Republican appointed. The other three were Democrats.

Senator KNOX. Did anybody request the appointment of Mr. Thompson?

Mr. HUNDLEY. I said that I had a telegram from Frank S. White & Sons. Their statement is on file. They requested the appointment of Mr. Thompson. They called me up over the phone and suggested him.

Senator CLARK, of Wyoming. So far as it has developed here this morning, petitioning creditors to the amount of \$24,000 of this concern—and your statement shows it to be worth a great many million dollars—

Mr. HUNDLEY. Yes, sir.

Senator CLARK, of Wyoming. What was the total indebtedness of the concern?

Mr. HUNDLEY. Two million eight hundred thousand dollars unsecured. There were bonds on the property.

Senator CLARK, of Wyoming. Were the other \$2,780,000 of indebtedness absolutely unrepresented at any of these hearings? Did they take no action in the matter, or make no appearance in the matter of the appointment of receivers?

Mr. HUNDLEY. None whatever before me. At the first meeting of the receivers, and when their first report—

Senator CLARK, of Wyoming. That is a singular proposition.

Senator CLARKE, of Arkansas. They did not have any chance. The petitioning creditors gave notice one evening, and their attorneys went up the next morning.

Senator CLARK, of Wyoming. The question that arose in my mind was whether or not they ought to have had a chance.

Senator KNOX. Did they acquiesce? Was there any protest against the receivers afterwards?

Mr. HUNDLEY. None whatever. More than \$500 worth of indebtedness is required by the bankrupt law. That gave them the right to file a petition, and I never would have granted any receiver had it not been that the bankrupt itself was present. I should not have done that but for the fact that the bankrupt itself was present by attorney and consented to it.

Senator KNOX. Was the question ever raised afterwards?

Mr. HUNDLEY. Never.

Senator KNOX. I mean with respect to the propriety of a receivership. I am not talking of the personnel of the receivers, but of the propriety of a receivership, under the circumstances.

Mr. HUNDLEY. The only question ever raised afterwards was the continued fight by the second petitioning creditors against the Adlers, on account of their collusion with the bankrupt.

Senator CLARK, of Wyoming. That was simply a fight as to the personnel of the receivers?

Mr. HUNDLEY. Yes, sir; the personnel of the receivers. There was no fight against the appointment of the receivers.

Senator KNOX. Against the receivership as a status?

Mr. HUNDLEY. As a status in the court. There never has been one paper filed against the status of this estate as to the appointment of these receivers.

Senator KNOX. That is what I want to know.

Mr. HUNDLEY. Not one solitary paper, from start to finish.

I will now let Mr. Campbell make his statement.

Senator CLARKE, of Arkansas. Judge Richardson may want to ask you some questions.

Mr. HUNDLEY. Let me make a suggestion. These gentlemen have been here for two weeks. I do not hesitate to say that I will return to the stand and let Judge Richardson ask me all the questions he wishes.

Representative RICHARDSON. I agree to that unhesitatingly.

Mr. HUNDLEY. Let the committee get through with these gentlemen first.

Representative RICHARDSON. I agree to that without any hesitancy. I only want to make this suggestion.

At the beginning of these proceedings a rule was established by Senator Dillingham, on behalf of the committee, that witnesses would be examined alone in the room, and none of the other witnesses would be present to hear them. I was not present this morning when the committee met. That rule applied to the witnesses on the part of the protestants, absolutely. I did not know anything about this meeting until you, Mr. Chairman, so kindly gave me notice this morning over the phone. It does seem to me that a rule applying to those who have gone before ought to apply to these gentlemen also.

Senator KNOX. Judge, we made an exception this morning.

Representative RICHARDSON. I wanted to inquire about that.

Senator KNOX. We considered it, and made an exception at the request of Judge Hundley. We think his relation to this matter is just a little different from that of a protestant.

Representative RICHARDSON. That is all right; I was not here, and I desired to know.

Senator KNOX. I do not see any substantial objection to it. We did not think there was this morning. It was put on the ground that one of these gentlemen had possession of papers to which the Judge wanted to refer, and that his presence would facilitate matters. Unless there is some serious objection to going on upon the same theory, I think we had better proceed as we have been.

Representative RICHARDSON. I have nothing to say about it. I did not know what the rule was in this matter.

Mr. HUNDLEY. These other gentlemen are here only with respect to the Southern Steel matter.

STATEMENT OF EDWARD K. CAMPBELL.

Mr. CAMPBELL. Mr. Chairman and gentlemen, I have been requested to make a statement relative to a decree, I believe of November 1—

Senator CLARKE, of Arkansas. What relation have you to this case?

Mr. CAMPBELL. I was one of the attorneys, and am yet, of the receivers, they not having been formally discharged.

Senator CLARKE, of Arkansas. What did you have to do with the case at the time the application for the appointment of a receiver was made to the court?

Mr. CAMPBELL. Nothing at all.

Senator CLARKE, of Arkansas. Were you present when the petition was presented to and considered by the court?

Mr. CAMPBELL. No, I was not.

Senator CLARKE, of Arkansas. Then your knowledge of it begins after the appointment was made?

Mr. CAMPBELL. After the appointment of the receivers.

Senator CLARKE, of Arkansas. And when the current orders in the administration of the estate were made by the court?

Mr. CAMPBELL. My connection with it commences after the appointment of the first three receivers.

Senator CLARKE, of Arkansas. To what do you want to direct your statement?

Mr. CAMPBELL. To the order of November 1, when Colonel Bush was appointed.

Senator CLARKE, of Arkansas. That identifies it.

Mr. CAMPBELL. My firm, the firm of Campbell & Johnston—

Senator CLARKE, of Arkansas. Who is the Johnston of that firm?

Mr. CAMPBELL. The son of Senator Johnston.

Senator CLARKE, of Arkansas. How old a man is he?

Mr. CAMPBELL. I suppose about 30.

Senator CLARKE, of Arkansas. How long has he been practicing law?

Mr. CAMPBELL. Six or eight years.

Senator CLARKE, of Arkansas. Was your firm selected to represent the receivers on account of Mr. Johnston's father being a United States Senator?

Mr. CAMPBELL. I never heard of that being the reason. I have practiced law there a number of years, and I assumed that I was employed for other reasons.

Senator CLARKE, of Arkansas. Proceed.

Mr. CAMPBELL. At any rate—

Senator CLARKE, of Arkansas. Of course we can not stretch this thing out indefinitely. Be as concise as you can and bring your statement to the material point of this inquiry. If there is anything in connection with the decree appointing Colonel Bush as an additional receiver, which has been assailed here, we shall be glad if you will confine your statement to that.

Mr. CAMPBELL. That is exactly what I shall try to do, just giving enough to make the statement intelligible.

Senator CLARKE, of Arkansas. All right, sir.

Mr. CAMPBELL. After being retained by the receivers there developed some lack of harmony apparently, at any rate, and it is difficult to explain in words how men can be inharmonious and it not develop on the surface.

We went to Huntsville and presented to Judge Hundley a petition on the part of two of the receivers, Thompson and Chandler, asking that he take some action in the matter, stating that there was want of harmony. Notice was given of that petition to Mr. Adler, and after a day or two's delay—

Senator CLARKE, of Arkansas. What was the action asked for—to remove Adler?

Mr. CAMPBELL. It did not ask that he be removed, in terms. The petition is here, I believe. It simply stated the fact that there was want of harmony, and owing to the large interests involved, the court should take such action as to him might seem proper.

We carried it to Huntsville and gave notice to Mr. Adler, and a day or two's delay occurred, owing to the fact that he or his counsel wanted delay. Whilst there my attention was first called to the original decree appointing the receivers. There had been nothing that required us to examine the decree otherwise than to suppose it was a decree appointing receivers in bankruptcy. On reading it it occurred to me that some changes might be made which would be advantageous in the administration of the estate.

I knew at that time that this property was very widely scattered, some in Georgia and some in Tennessee, and application would have to be made to other courts in order that the receivers might get possession, or some other question might be made, and adopting the course which I believe lawyers generally do in writing out things, we thought we would write enough and not have too little in the decree. For that reason we amplified it.

There was a provision in the original decree requiring the payment of wages and the earnings of employees of the bankrupt, and I thought that was contrary to the statute, because the statute requires and allows only the payment of as much as \$300 to any one person as a preferred claim.

In order to limit we just simply provided that there should be paid the amount allowed by law. That was one of the changes made in the original decree.

The question as to the six-months' period is the one I have just led up to. I do not think—I know it was not mentioned to Judge Hundley in my presence; it was not mentioned by me; anything about the period that the receivership should continue. The other attorney associated with me there was Mr. Dyer, who, by the way, has made a statement in the record, and we were discussing the point as to how long—whether there should be any definite time stated in the decree.

All this occurred, you will understand, simply between Mr. Dryer and myself, the other parties not having come, and we sitting around the court there, with nothing to do but to look into this record.

There is a provision in the bankruptcy act that receivers may be appointed by the court, and may be authorized to operate the property for a limited period. In view of that provision we concluded it was better to put some definite time in the decree rather than just to leave it under the general provision that they should operate it until the further orders of the court.

Senator CLARKE, of Arkansas. You say "We agreed upon that"—you and Mr. Dryer?

Mr. CAMPBELL. Mr. Dryer and I. We were talking. We thought it was a good thing to put in the decree. He framed the decree, and I concurred in it. By reading the decree you will see that it provides that they shall operate six months, provided it can be advantageously done, and of course, we understood as lawyers that the whole matter was under the direction of the court, and he might stop it at any time.

Another matter which we discussed—and I am giving you this, although possibly it does not pertain to this question, except to show that the court was not involved in the matter—there was provision for receivers' certificates. There had been some effort to place receivers' certificates in Birmingham, I knew, and some question had been raised about the right of the court in bankruptcy to have receivers' certificates, and of course it is questionable, to say the least of it; whether or not receivers' certificates would be a prior lien. We wanted, though, to make the decree as efficacious as possible and we concluded if we would put in the period of six months that we might aid the receivers in selling the certificates.

That time, you gentlemen will recall, was just the period when the panic struck the country, and the banks were not loaning out money very readily. Down our way they were loaning it out rather slowly.

Those are the considerations under which we acted.

Senator CLARKE, of Arkansas. Before you pass away from the six months' business, I want to ask you if it is not a fact that upon the adjudication of bankruptcy by the court the creditors can take charge of the property by the election of trustees and lift it out of the hands of the receivership?

Mr. CAMPBELL. Certainly; and they did it in this case.

Senator CLARKE, of Arkansas. How long after the filing of the original petition in bankruptcy, by the consent of the bankrupt, was it before the court adjudicated the estate to be in a condition of bankruptcy?

Mr. CAMPBELL. In this particular case?

Senator CLARKE, of Arkansas. Yes.

Mr. CAMPBELL. The original petition was filed in October, and I do not think there was an adjudication until the latter part of January—less than three months. That was owing very largely to contests between creditors over the two petitions, whether one or the other—there were several petitions—

Senator CLARKE, of Arkansas. Was the delay in the adjudication of bankruptcy due to the inaction of the court, or was it due to the controversy pending between the creditors?

Mr. CAMPBELL. It was due to the controversy between creditors.

Senator CLARKE, of Arkansas. Did the judge ever delay it on his own account or on his own motion?

Mr. CAMPBELL. I am sure he did not.

Senator CLARKE, of Arkansas. Did he take up and dispose of it when counsel were ready?

Mr. CAMPBELL. Yes, sir; so far as I know.

Senator CLARKE, of Arkansas. After it was submitted to him did he dispose of it seasonably?

Mr. CAMPBELL. Yes, sir.

Senator CLARKE, of Arkansas. How long after the original petition was filed was it until the creditors actually took the estate out of the hands of the receivers?

Mr. CAMPBELL. They elected trustees as soon as the adjudication took place. They could not elect them until there was an adjudication. The judge adjudicated them on one day, and either that day or the next day they elected trustees.

Senator CLARKE, of Arkansas. So, as a matter of fact, the six months' limitation was not regarded by the court as a fixed period to continue the receivership?

Mr. CAMPBELL. No; it was not.

Mr. HUNDLEY. I will ask you if Mr. Benners was not present when I signed the decree?

Mr. CAMPBELL. Yes, sir. I have stated that it was the act of the attorneys who were there representing the receivers, who wanted to get as full a decree as possible.

When it finally came on at night we were in a great hurry to leave; we had been there two days. We asked him to sign a decree; the three firms were represented before him; Mr. Benners, who represented Mr. Adler; Mr. Dryer, who represented Mr. Thompson, and I, who represented Mr. Chandler. I speak of it as representing them individually, because we were spoken to differently by those different ones. Of course, we represented the whole board. The matter was considered, and Judge Hundley asked if there was any objection to the decree, and none was made.

Mr. HUNDLEY. Mr. Benners was present?

Mr. CAMPBELL. Yes, sir.

Senator CLARKE, of Arkansas. You say that each receiver selected a lawyer, and after the approval of his appointment the lawyer became the attorney of all of the receivers?

Mr. CAMPBELL. Yes, sir.

Senator CLARKE, of Arkansas. What receiver selected your firm?

Mr. CAMPBELL. Mr. Chandler.

Senator CLARKE, of Arkansas. What particular receiver selected Mr. Dryer?

Mr. CAMPBELL. Mr. Thompson.

Senator CLARKE, of Arkansas. What particular receiver selected Messrs. Percy & Benners?

Mr. CAMPBELL. Mr. Adler. Benners was in the matter from the very first. I only came into it after the appointment of the receivers.

Senator CLARKE, of Arkansas. There was not any receiver from the first. There was not any receiver until one was appointed.

Mr. CAMPBELL. I mean representing the petitioning creditors.

Senator CLARKE, of Arkansas. And after the appointment of Mr. Adler as a receiver he selected Mr. Benners as one of the attorneys,

notwithstanding the fact that Mr. Benners represented the petitioning creditors? He was selected as the attorney of Mr. Adler, or selected by Mr. Adler to represent the receivers?

Mr. CAMPBELL. That was the idea. Of course, the lawyers got together—

Senator CLARKE, of Arkansas. I am sure of that. I wanted to know who originated the appointment of each particular lawyer, or firm of lawyers.

Mr. CAMPBELL. We represented the board.

Mr. HUNDLEY. Mr. Benners testified something about a card that I published in the public press at Birmingham. Do you know anything about it? If you do I wish you would state it.

Mr. CAMPBELL. In reference to that card, I remember this fact. While at Huntsville on this occasion there were a great many representations coming up to the judge in the shape of telegrams and telephones—so he told me—and some one had written him or phoned him or wired him—so he said—that the people were scared that there might be applications made for the appointment of receivers, and that they might be appointed without notice, to the great injury and detriment of the properties, and that they hoped he would not make any appointment of receivers without notice.

Mr. HUNDLEY. To the bankrupt?

Mr. CAMPBELL. To the bankrupt. He showed me a card which, in view of that, he thought it might be a good idea to publish. I remarked to him: "Judge Hundley, there is a good deal of alarm in Birmingham and, I believe, in the Birmingham district, because of the panicky condition of affairs, and it might break a good concern if receivers were appointed without notice, or even if application were made, and if you can say anything which will allay any feeling of that sort I think it would be a good public service."

He said, "Then I will publish this card, stating that fact." I commended it. I thought it was the proper thing to do.

Mr. HUNDLEY. Did my appointment of the receivers in this case have any relation to that card?

Mr. CAMPBELL. None in the world. I thought we were talking about other matters than this, because there was a bad condition, or there was supposed to be a bad condition in the district. Is there any other statement you desire?

Senator CLARKE, of Arkansas. No. Judge Richardson, do you desire to ask any questions?

Representative RICHARDSON. Mr. Campbell, you say there was a want of harmony when you made the application to the judge on behalf of Thompson and Chandler?

Mr. CAMPBELL. Yes, sir.

Representative RICHARDSON. You did not make it for Adler at all. It was for Thompson and Chandler? They were the receivers for whom you made the petition?

Mr. CAMPBELL. That is correct.

Representative RICHARDSON. The want of harmony did not exist between Thompson and Chandler?

Mr. CAMPBELL. Not that I know of. They were making complaint to me and to other counsel that Adler was not working with them to raise some money. That is about the effect of what they said to me.

Representative RICHARDSON. Was it not further known that Adler was willing to make a separate bond but not a bond in conjunction?

Mr. CAMPBELL. That matter had been passed before it ever came to my attention.

Representative RICHARDSON. But the want of harmony did not exist between Thompson and Chandler?

Mr. CAMPBELL. No, sir.

Representative RICHARDSON. And the effect of your petition, representing those receivers, was to remove Adler?

Mr. CAMPBELL. I do not think it was. It was certainly designed that it should not have that effect. If you will read it you will see that it did not ask the court to remove him, but that its purpose was to acquaint the court with the conditions among its officers and to ask him to take such course as he saw fit. We did not want to put the receivers in the attitude of asking that one of their own number be removed, but we thought the court ought to know what the condition was.

Representative RICHARDSON. Thompson and Chandler constituted a majority of the receivers at that time?

Mr. CAMPBELL. Yes, sir.

Representative RICHARDSON. They could act.

Mr. CAMPBELL. That is questionable, I suppose. The last decree provided that a majority could do it. The first decree did not.

Representative RICHARDSON. Do you not recall the fact that when Thompson and Chandler were appointed receivers by Judge Hundley it created a great deal of discussion through that section?

Mr. CAMPBELL. Yes; I heard a good deal of talk about it.

Representative RICHARDSON. And a great deal of complaint?

Mr. CAMPBELL. I can not say that, Judge. There were certain elements that complained, but so far as I heard anything about it, it came in legal circles, and it might have come through parties in interest.

Representative RICHARDSON. Was it not in the public press stated as a matter of astonishment that Joe Thompson should be made a receiver, under all the circumstances, of that great property?

Mr. CAMPBELL. Judge, I did not pay very much attention to what was in the papers, to be frank with you about it. It did not concern me until after I was selected as an attorney; but there was some talk in some of the papers, some criticism in some of the papers, a Gadsden paper, I was told, a Republican paper published in Birmingham. If I may be allowed to say so, I believe there was more political matter involved in that than anything else in the proposition.

Representative RICHARDSON. You heard no complaint about the appointment of Adler in the public press? You saw none or read none?

Mr. CAMPBELL. I do not recall that I did.

Representative RICHARDSON. You did about Chandler and Thompson?

Mr. CAMPBELL. Yes, sir.

Representative RICHARDSON. Soon after the passage of the law by Congress providing for the appointment of an additional Federal judge for the northern district of Alabama there were several applicants for the position.

Mr. CAMPBELL. That is correct.

Representative RICHARDSON. I believe you were among the number?

Mr. CAMPBELL. Yes, sir.

Representative RICHARDSON. How many more do you recall now, Mr. Campbell?

Mr. CAMPBELL. Who applied?

Representative RICHARDSON. Who were applicants, direct applicants.

Mr. CAMPBELL. Mr. E. D. Smith, of Birmingham; Judge Walker, I think, of Huntsville; Judge Pelham, of Anniston. I do not remember all of them. You probably heard of them too. I suppose I heard of them. I tried to.

Representative RICHARDSON. I may refresh your memory. Pleasants was a candidate?

Mr. CAMPBELL. Yes, sir. I thought you were asking about Democratic applicants.

Representative RICHARDSON. Oh, no.

Mr. CAMPBELL. There was Mr. Pleasants, and I also heard that Mr. Street was a possible applicant for it, besides Judge Hundley.

Representative RICHARDSON. And Judge Hundley?

Mr. CAMPBELL. Yes, sir.

Representative RICHARDSON. Is it not a fact that all those applicants presented their claims to the bar of Birmingham and that the Birmingham bar, with considerable unanimity, recommended Mr. Smith, and as second choice recommended Mr. Pleasants, a Republican?

Mr. CAMPBELL. There was some sort of resolution of that sort.

Representative RICHARDSON. There was action of that sort by the Birmingham bar?

Mr. CAMPBELL. Yes, sir.

Representative RICHARDSON. Mr. Hundley was not recommended by that bar?

Mr. CAMPBELL. No; nor was Mr. Campbell.

Representative RICHARDSON. But Shelby Pleasants—

Mr. CAMPBELL. Shelby Pleasants—

Representative RICHARDSON. Whom you know as a Republican?

Mr. CAMPBELL. Yes, sir; he is a Republican.

Representative RICHARDSON. Shelby Pleasants was indorsed as second choice, next to Ed. Smith, by the bar of Birmingham.

Mr. CAMPBELL. By a meeting of the lawyers.

Representative RICHARDSON. Claiming to represent the lawyers?

Mr. CAMPBELL. They represented their personalities and their influence. I think if you will look at some of the other petitions on file, you will see a great many other lawyers who were not there.

Representative RICHARDSON. I am not asking about the petitions; I am asking about the bar.

Mr. CAMPBELL. There was a bar meeting in which Ed. Smith was recommended as first choice and Shelby Pleasants was recommended as second choice.

Representative RICHARDSON. Is it not a fact that a majority of the men who participated, so far as you can recall it, in that meeting were Democrats?

Mr. CAMPBELL. Yes, sir.

Representative RICHARDSON. There were very few Republicans?

Mr. CAMPBELL. Very few. I was not in Birmingham. I am talking from general impressions.

Representative RICHARDSON. Of course.

Mr. CAMPBELL. That is what I heard. I heard that almost all of them were Democrats. There were very few Republicans there. That is my information.

Senator CLARK, of Wyoming. There are not many Republicans in Birmingham?

Mr. CAMPBELL. No, sir.

Representative RICHARDSON. Do you say there are not many Republicans in Birmingham?

Mr. CAMPBELL. I mean not many Republican lawyers.

Senator CLARKE, of Arkansas. You say there were a number of Democratic aspirants for the position?

Mr. CAMPBELL. Yes, sir.

Senator CLARKE, of Arkansas. Why did not some of these Democrats indorse some of their own brethren?

Mr. CAMPBELL. They did. Mr. Smith was a Democrat.

Senator CLARKE, of Arkansas. I misunderstood that.

Mr. CAMPBELL. Another Republican aspirant was Mr. W. H. Smith, a son of ex-Governor Smith. Whether his name was before the Birmingham meeting I do not know. I took no interest in it.

Representative RICHARDSON. Young Ed. Smith, whom they indorsed as first choice, was then and is now a Democrat.

Mr. CAMPBELL. Yes, sir.

Representative RICHARDSON. That is all, Mr. Campbell.

STATEMENT OF FELIX E. BLACKBURN.

Senator KNOX. Mr. Blackburn, I would suggest that you get down to what you want to tell us, and that you state it as briefly as you can.

Mr. BLACKBURN. My connection in appearing before this committee is as to the Southern Steel Company matter, in bankruptcy, before Judge Hundley.

I desire to state that on October 24 the firm of which I am a member, Powell & Blackburn, together with some several other lawyers in Birmingham, learned that a petition in bankruptcy had been filed against the Southern Steel Company. We and our colleagues had a number of claims against them. We heard that Mr. Benners, who has testified before this committee, who was the attorney for the first petitioning creditors, left Birmingham at 4 o'clock to go to Judge Hundley at Huntsville. With him was Mr. O. R. Hood, attorney for the bankrupt.

Our firm wired Judge Hundley, requesting that no appointment be made until the next day; that we would appear in the interest of creditors, asking for the appointment of receivers.

We also telephoned by long distance to a local attorney in Huntsville, requesting that he make known our desires in the matter; that he defer the appointment of receivers until we could be heard.

We arrived in Huntsville on the 25th—Mr. Oberdorfer and I. Mr. Oberdorfer is present. We first went to Judge Hundley's chambers. Not finding him there we then went to his former law office, and there we found waiting Mr. Benners and Mr. Hood. Shortly Judge Hundley came in and the matter was presented to the Judge. Mr. Benners presented the petition for receivers, and I

presented a petition of those whom my colleagues and I represented. Mr. Benners had his petition, and it was quite lengthy. In asking for the appointment of receivers he at the same time asked that the plant be continued, or that the receivers be authorized to continue the plant in operation, and to that end that the receivers be authorized to issue \$500,000 of receiver's certificates. In the same petition, which was typewritten, he requested the appointment of Morris and Edgar Adler. In our petition we did not suggest the names of any persons as receivers, leaving that to the Judge. We were there mainly to oppose the appointment of the Adlers as receivers.

It had been rumored around Birmingham for some time before the filing of this petition that such a step would be taken and that the Adlers would be put in as receivers. That was a matter of common knowledge. The collusion as we saw it between the bankrupt and the creditors, whom Mr. Benners represented, was so apparent that our firm and the others associated with us desired other persons put in as receivers. The fact of the business is I was afraid to risk the Adlers in charge of that plant. We did not want to put it in their power so to operate that plant as that it could finally be taken charge of by the Schulers, the Van Cortlandts, and the Adlers. That is the way it appeared to us. So we resisted the appointment of the Adlers before Judge Hundley, pressing mainly the fact that it was a collusive arrangement and in fact no bona fide lawsuit.

Senator KNOX. You urged that in open court?

Mr. BLACKBURN. Yes, sir. We suggested two gentlemen in Birmingham—successful business men, men of means, who could, if it was desired, furnish the money to operate this plant—Mr. Kettig and Mr. Steiner.

Right here, though, I want to state that I never did take to the idea that that plant should be operated by receivers, or by the court through its receivers. It had been demonstrated and shown—and it is in the record—that the property of that plant had been run at a great loss, some several hundred thousand dollars, by those who were in charge, and by the owners of the property, and the way it was being run had really brought on this financial trouble. While I was willing for the receivers to be given that opportunity of operating the plant, if they could do it, it never did appear clear to me how the receivers could do what the owners of the property had failed to do—that is, to operate it at a profit.

Senator KNOX. What was the extent of the interest you represented?

Mr. BLACKBURN. The record that was present before Judge Hundley at that time, our petition, represented \$15,000 in amount, and six in number of creditors. The petition represented by Mr. Benners was less than \$9,000, and three in number. I called the court's attention to the status of the two petitions and urged upon the Judge that fact; I thought our petition ought to receive as much at least if not more consideration than the petition presented by Mr. Benners, although his petition was first filed.

You see there were two petitions filed. I designate the first petition that filed by Mr. Benners and the second petition that filed by us. As I say, I pressed that fact on the Judge, and it struck me that the Judge did not think it necessary at first that three receivers should be appointed. I was the first to suggest three receivers. As I say, I

was impressed that the Judge did not think at first three receivers should be appointed.

To show the extent to which the matter was presented to Judge Hundley, the details gone into, I called the attention of the court to the fact that those properties, amounting in value to something like \$14,000,000, were located in three States—Tennessee, Georgia, and Alabama—and I told him I did not see how one receiver, or even two receivers, could handle that property or take charge of it and hold it and preserve it until the further orders of the court.

I told him that we did not want and would strenuously oppose the Adlers; that we had grave doubts as to the bona fides of the proposition. They had been approached, and we knew it, some ten days before the filing of the petition by the bankrupt, asking would they accept the receivership, showing the collusiveness.

The act of bankruptcy alleged in the first petition was simply a letter written by the attorney representing the Southern Steel Company to one of the petitioning creditors, in which he admitted his inability to pay his debts and his willingness to be adjudged a bankrupt. I told Mr. Benners at the time he could not get an adjudication on that petition, as I saw it; that that required a corporate act. The fifth act of bankruptcy is where a bankrupt admits in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that account. At Huntsville I told Mr. Benners, "You can not get an adjudication on that petition."

Senator KNOX. This letter was written by the attorney for the corporation?

Mr. BLACKBURN. Yes, sir; by Mr. Hood, the attorney for the bankrupt. It was the best act of bankruptcy they could get at the time.

Senator KNOX. None of the general officers of the corporation were there?

Mr. BLACKBURN. No, sir.

Senator CLARKE, of Arkansas. He was the local attorney?

Mr. BLACKBURN. Yes. I want to see if I get the wording of that letter, to refresh my own recollection on it.

Senator KNOX. Was that amended in any way, or is that the way it stood at the time the appointment was made?

Mr. BLACKBURN. That is the way it stood at the time the appointment was made. I want to refer to this letter as showing the attitude that Mr. Benners has taken in this matter in asking that this petition be amended.

BIRMINGHAM, ALA., October 24, 1907.

SAYRE MINING AND MANUFACTURING COMPANY,
Birmingham, Ala.

GENTLEMEN: In regard to your claim against the Southern Steel Company, I beg to say that we are in a position where we can not pay it. We regret to make this statement and admission; under these circumstances we are forced to make the admission to you and to all others concerned, that the Southern Steel Company is unable to pay its debts and is willing to be adjudged a bankrupt on that ground.

Very truly, yours,

SOUTHERN STEEL COMPANY,
By O. R. HOOD, *Attorney.*

That is the letter which Mr. Benners set up in his petition as an act of bankruptcy. Our position was that that was not a corporate act; that the only way a corporation could admit its inability to pay its

debts and its willingness to be adjudged a bankrupt on that ground was at a meeting of the directors by a resolution passed to that effect.

Senator KNOX. Was that declaration of insolvency ever subsequently ratified by any corporate act?

Mr. BLACKBURN. There is nothing of the sort in the record of the case.

Senator KNOX. The only ratification you know of would be acquiescence.

Mr. BLACKBURN. Yes, sir; acquiescence.

Mr. WOOD. There was a resolution offered in evidence, but it was argued that it did not support the letter.

Mr. BLACKBURN. With that act of bankruptcy alleged, and with a second petition filed by our creditors, or by creditors whom we represented——

Senator CLARKE, of Arkansas. Was not that resorted to because a corporation can not go into voluntary bankruptcy?

Mr. BLACKBURN. That may be true, but it must be done by a corporate act.

Senator CLARKE, of Arkansas. I understand.

Mr. BLACKBURN. It must be a corporate act to do it.

Senator CLARKE, of Arkansas. But that was the only means left to Mr. Hood to practically accomplish voluntary bankruptcy.

Mr. BLACKBURN. Yes, sir; but to make it regular the directors should have held a meeting and passed the resolution; and we produced the authorities to sustain it.

Our petition set up four or five acts of bankruptcy antedating by several weeks and months this act of bankruptcy named in Mr. Benner's petition—paying creditors, making a preference while insolvent, following the statutory form.

After presenting the names of the two gentlemen whom we wished for receivers, Mr. Benner raised objections to both and claimed while Mr. Kettig was a very fine man, a competent business man, a safe business man, that neither he nor Mr. Steiner was a suitable man to be receiver. We argued the matter before the judge for fully an hour, and the judge announced that he would take all the matters under consideration and make a decision at 11 o'clock. Just before leaving, and as a final effort and as a final appeal to the judge, I said to him, "If you can not appoint one or the two men whom we have suggested, do not appoint both of the Adlers; as a final request I insist and ask that both of the Adlers be not appointed."

At 11 o'clock the judge went on the bench. He stated that he had taken all these matters into consideration. I do not think Mr. Hood was present at the time when the judge made his announcement. I do not know whether Mr. Benner was or not. But the judge stated, in view of the vast amount, in value, of the property involved, and in view of the arguments and presentations of alleged collusiveness which had been called to his attention between the bankrupt and the petitioning creditors, he had decided to appoint one of the men designated by the original petitioning creditors—that man was Mr. Adler, who it was represented was familiar with business properties of that kind——

Senator KNOX. Is your petition here?

Mr. BLACKBURN. Yes, sir.

Senator KNOX. Which one is the petition you presented?

Mr. BLACKBURN. This [indicating] is it.

Senator KNOX. You do not allege anything in here as an act of bankruptcy, except this admission in writing?

Mr. BLACKBURN. This is the petition for the receivers. Here is the petition for the adjudication.

Senator KNOX. They were all filed the same day?

Mr. BLACKBURN. Yes, sir; Mr. Benners's was filed on the 24th, but they were all presented on the same day—the 25th.

Senator KNOX. There were other allegations of acts of bankruptcy before the court than the letter written by the attorney?

Mr. BLACKBURN. Not at that time.

Senator KNOX. Were there when you presented your petition on the 25th?

Mr. BLACKBURN. No; we left that petition at Birmingham. We went on the 24th to Huntsville, and presented it on the 25th. We carried this petition with us. The petition was filed in Huntsville, not in Birmingham.

This was filed in Birmingham subsequent to the presentation of this petition [indicating] here.

Senator KNOX. What was the date of the order appointing the receivers?

Mr. BLACKBURN. The 25th.

Senator KNOX. On the 25th you filed a petition alleging certain specific acts of bankruptcy?

Mr. BLACKBURN. Yes, sir.

Senator KNOX. Not the letter of this attorney, but other acts?

Mr. BLACKBURN. Yes, sir.

Senator KNOX. So that there were before the court averments of bankruptcy other than this admission by counsel, when the judge appointed the receivers?

Mr. WOOD. In order that the record may be kept straight, the petition you have is 7980, which was filed at 9 p. m., which was not before the court that evening.

Senator KNOX. It was filed after the receivers were appointed?

Mr. BLACKBURN. Yes.

Senator KNOX. Then the only allegation of an act of bankruptcy at the time the receivers were appointed was the letter of the attorney?

Mr. BLACKBURN. Yes, sir; at that time.

Senator KNOX. I say at the time the receivers were appointed?

Mr. BLACKBURN. Yes, sir; but both petitions for the appointment of receivers were before the court.

Senator KNOX. I understand that.

Mr. BLACKBURN. As I was stating, the judge went on and gave his reasons for appointing the two men he did—Mr. Thompson and Mr. Chandler. I had urged before the court that one branch of the property of this company consisted of commissary stores, which were quite extensive. They had nineteen commissaries, and it struck me that if the plant was to be operated, at least one man familiar with that branch of the business ought to be appointed. And Mr. Chandler was appointed as representing that interest.

I have read Mr. Benners's testimony given before this committee, and I think, in order that it may be in the record, I should comment on certain portions of it, if the committee will bear with me.

Senator CLARKE, of Arkansas. Does it relate to you personally, or your clients?

Mr. BLACKBURN. Yes, sir; in a sense. It is in the record, and I propose to refer to it.

Senator CLARKE, of Arkansas. You can explain any feature of that kind:

Mr. BLACKBURN. I read from page 35 of Mr. Benners's testimony.

Senator BACON. Was there any doubt thrown by any representation or by the suggestion of anybody as to their ability?—

Referring to the receivers.

Mr. BENNERS. There was not. The fact will be presented to this committee that two other attorneys appeared there and asked for the appointment of a receiver and presented a petition, stating that the proceeding between the creditors whom we represented and the corporation was a collusive one. That is a fact.

To understand that petition, however, it is necessary for the committee to understand that this petition was presented by lawyers representing very small claims, by lawyers who habitually practice in the bankruptcy court; who appear in every bankruptcy case and endeavor, by getting a claim, to get to represent the trustees or somebody connected with the case.

All these gentlemen did was to say that they had no objection to the appointment of the Adlers, but asked the court to appoint a third man, the idea being that if they could name the third man they would get the representation of him.

I want to be courteous to this committee——

Representative RICHARDSON. How does this apply to you?

Mr. BLACKBURN. I am one of the attorneys, and it is a reflection on me.

Representative RICHARDSON. Mr. Benners stated that the parties referred to did not object to the appointment of the Adlers. You say you did. It can not refer to you.

Senator CLARKE, of Arkansas. Those were the only four attorneys there.

Mr. BLACKBURN. He says:

To understand that petition, however, it is necessary for the committee to understand that this petition was presented by lawyers representing very small claims; by lawyers who habitually practice in the bankruptcy court; who appear in every bankruptcy case and endeavor, by getting a claim, to get to represent the trustees or somebody connected with the case.

I desire to say that that is not true, for myself, and, so far as I know, for the others. The lawyers who were in that case Mr. Benners knew, and, of course, he made those remarks, as I take it, directed especially to Mr. Oberdorfer and myself, as we were the ones who went to Huntsville in this matter. I am unable to understand Mr. Benners's testimony. We were together in the legislature of Alabama of 1903, and, as I say, his testimony in that regard is certainly very surprising to me. We have always worked together. The fact of the business is, gentlemen, if you will pardon me—I do not mean to be self-laudatory—our firm does and has a considerable bankruptcy business in Birmingham and other districts. Through our regular clientele we represent quite a number of corporations. There is hardly a failure of any size but that some of our clients are interested in it, and we are in nearly every case on one side or the other. If that is not the fact it is frequently the case where other attorneys have bankruptcy proceedings they request us to join them in the proceedings.

Representative RICHARDSON. How do you apply this to yourself?

All these gentlemen did was to say that they had no objection to the appointment of the Adlers.

Mr. BLACKBURN. That is not the part that I am applying to myself.

Representative RICHARDSON. You say you objected to the Adlers because there was collusion? How can that apply to yourself?

Mr. BLACKBURN. What I object to is what I read.

Representative RICHARDSON. But that clause qualifies the whole thing?

Mr. BLACKBURN. You may construe it that way; I do not.

Senator KNOX. I think Mr. Blackburn has said enough to cover this point. If he thought that he was included in that characterization he had a right to make the statement he did.

Mr. BLACKBURN. I think it was meant for Mr. Oberdorfer and myself.

Senator CLARKE, of Arkansas. Let me ask you a few questions that will direct your attention to the features of it in which I think you are interested. Did the clients whom you represented on the occasion when you visited Huntsville on the 25th of October come to you in the regular course of your practice?

Mr. BLACKBURN. Yes, sir.

Senator CLARKE, of Arkansas. Or did you notify them that this bankruptcy proceeding was about to be precipitated?

Mr. BLACKBURN. We had the claims on hand sometime before this petition was filed.

Senator CLARKE, of Arkansas. In the regular course of business?

Mr. BLACKBURN. Yes, sir; in the regular course of business.

Senator CLARKE, of Arkansas. Did you know it was a part of the scheme, as you understood it, that the appointment of the two Adlers was to be asked of the court as receivers?

Mr. BLACKBURN. Yes, sir; it was commonly known in Birmingham.

Senator CLARKE, of Arkansas. Why did you not make some objection by name to their appointment in your petition?

Mr. BLACKBURN. We had not seen the petition. It was only rumor we had. We did not have the petition before us at the time we drew that petition. The strongest we could put it was to allege collusion and see the petition afterwards.

Senator CLARKE, of Arkansas. You simply asked in your petition that more than one receiver be appointed?

Mr. BLACKBURN. We asked in the petition for two.

Senator CLARKE, of Arkansas. More than one?

Mr. BLACKBURN. Yes, sir; and before the judge we insisted upon three.

Senator CLARKE, of Arkansas. What difference did it make to you who were the receivers if you were only interested in collecting the claims of your clients? Did you suppose that the estate could be manipulated by the receiver so as to make it solvent on one man's hands and insolvent in the hands of another?

Mr. BLACKBURN. My idea was that the receivers should be men who were not favorable or inclined to the secured creditors or to the Schulers. We wanted men in there whom we felt would look after the interests of the unsecured creditors. We felt that we were not

on the inside of this proceeding; that it was a friendly and collusive affair; and we wanted outside men, not men suggested by the bankrupt.

Senator CLARKE, of Arkansas. In the suggestion for the appointment of other receivers, was it your purpose to have some one appointed who would designate your firm as his legal representative?

Mr. BLACKBURN. No, sir; there was nothing of the kind.

Senator CLARKE, of Arkansas. That is the intimation in Mr. Benner's statement.

Mr. BLACKBURN. Yes sir; it is not a fact. They had a right to employ whom they preferred. As a matter of fact they could file a petition with the court and get the instruction of the court.

Senator CLARKE, of Arkansas. After the appointment of Mr. Thompson and Mr. Chandler, did you know anything about a proposition to hire Chandler and Thompson to resign, or to buy them out, by offering to pay them two-thirds of the fees and two-thirds of the trustees' fees in order to get them to abdicate control of the property as receivers?

Mr. BLACKBURN. The first I heard of that proposition was when I read it in Adler's testimony before this committee.

Senator CLARKE, of Arkansas. That was not a movement gotten up by the creditors generally, then?

Mr. BLACKBURN. No, sir.

Senator CLARKE, of Arkansas. If it was, your creditors were not in it?

Mr. BLACKBURN. No, sir.

Senator CLARKE, of Arkansas. You were not consulted about it?

Mr. BLACKBURN. No, sir.

Senator CLARKE, of Arkansas. I believe that is all.

Mr. BLACKBURN. There is one other matter I desire to refer to, and that is the delay which has been charged. In Mr. Benner's testimony by innuendo it is stated that the administration of this estate was delayed for the purpose of retaining the receivers in charge of the properties, in order that their compensation might be greater.

Now, gentlemen, the delays, in my judgment, in this whole matter have been occasioned by the crudeness in which the first petition was gotten up, if I may use that expression. It necessitated Mr. Benner, when demurrers were filed by some six or eight law firms in Birmingham to his petition, filing an amendment to his original petition, and in his amendment he set up the identical acts of bankruptcy which we had set up in our second petition, thereby seeking to take from us and our second petition and put into his first petition the very acts of bankruptcy which we had alleged. Of course we resisted that and resisted it very strenuously. We had all gone into court. The parties had become liable for the costs. We objected to him stealing our thunder, so to speak. In our petition the bankrupt, by its attorney, Mr. Hood, appeared and answered and demanded a trial by jury. Under the first petition Mr. Hood appeared and answered, denying the act of bankruptcy which he himself wrote.

Now to explain that delay I will call the attention of the committee to general order numbered 7.

Senator CLARKE, of Arkansas. Is that answer here?

Mr. BLACKBURN. I read Mr. Hood's answer to the first petition. After the style and cause, it proceeds:

At Birmingham in said division of the said district, on the 2d day of November, A. D. 1907. And now the said Southern Steel Company appears and for answer to the petition filed by the Birmingham Coal and Iron Company, Sayre Mining and Manufacturing Company, and Star Cahaba Coal Company, denies that it has committed the acts of bankruptcy set forth in said petition, and avers that it should not be declared a bankrupt for any cause in said petition alleged; and this it prays may be inquired of by the court.

Senator KNOX. Who signs that?

Mr. BLACKBURN. "The Southern Steel Company, by O. R. Hood, attorney."

Senator KNOX. Is it sworn to?

Mr. BLACKBURN. No, sir; it is not sworn to.

Senator KNOX. What date was it filed?

Mr. BLACKBURN. This was filed November 2, 1907.

Senator CLARK, of Wyoming. It might be that Mr. Hood concluded that his statement in the letter did not constitute an act of bankruptcy.

Mr. BLACKBURN. I think probably so.

Senator KNOX. He demurs to his own allegations.

Mr. BLACKBURN. He makes no demand for trial by jury there. Under general order No. 7 in bankruptcy, the Supreme Court lays down the order that where two or more petitions in bankruptcy are filed against the same person, alleging different acts of bankruptcy, and the bankrupt appears and files an answer and denies the act of bankruptcy, the hearing shall be had upon that petition alleging the earliest act of bankruptcy. Now you can see where we were—we contending for, and they objecting to, a hearing on our petition. The court was in vacation. Our petition had alleged the earliest act of bankruptcy, dating back some three or four months. We had no jury, the court being in vacation.

When Mr. Benners filed his amendment, setting up the very same grounds that we had set up *in hæc verba*, Mr. Hood again files his answer, and in that answer he admits the first act of bankruptcy, which was that letter he wrote, but denies formally the other acts which had been alleged in our petition. But in that answer he does not demand a trial by jury.

The question was before the judge and was argued in open court, we insisting that we should have a hearing on our petition, and that they be not allowed to amend their petition so as to steal our case, practically; and that was a very important and serious question in that case.

Senator CLARKE, of Arkansas. Why was it?

Mr. BLACKBURN. In this way: If it should be determined that the court should not allow this amendment to the Benners petition, then under the rule our petition should first be heard.

Senator CLARKE, of Arkansas. What significance attached to that?

Mr. BLACKBURN. The significance was this: A jury had been demanded in our case, and we would have to wait for the convening of the court to have a trial by jury. The result was—to our detriment, as we thought—that the court referred all these matters to the special master to take testimony and to report as to whether or not the amendment should be allowed, and generally to report on the case.

Senator CLARKE, of Arkansas. Let me ask you another question. Is it the law or practice in bankruptcy in your jurisdiction to allow to the attorney who originated the proceedings that finally culminated in an adjudication of bankruptcy a fee out of the funds?

Mr. BLACKBURN. Oh, yes, sir.

Senator CLARKE, of Arkansas. That was the contest between your firm and Benners.

Mr. BLACKBURN. I will say frankly that is one thing we were fighting over. We did not want him to secure an adjudication and take the acts of bankruptcy which we had alleged and put them in his petition and——

Senator KNOX. You wanted to control the proceedings?

Mr. BLACKBURN. Yes, sir.

Senator CLARKE, of Arkansas. It is a fact that the attorney who represents the petition upon which the adjudication actually takes place gets a fee out of the fund?

Senator KNOX. I know, but that is an incident of control.

Senator CLARKE, of Arkansas. That was the contest between you and Benners?

Mr. BLACKBURN. Yes, sir.

Senator CLARKE, of Arkansas. Who actually got it?

Mr. BLACKBURN. It went off in this way. The special master reported that the two petitions be consolidated and that adjudication be had upon the consolidation, and on the theory—but before I come to that I want to tell what I think is the motive of Mr. Benners in testifying here.

In that hearing, when this matter was argued, when I laid Mr. Hood's answer down before him, where he had denied the acts of bankruptcy and not demanded a trial by jury, and over here I laid down his answer in the case where he demanded trial by jury, I said to him in open court, "You are complaining of delay. If you will withdraw this demand for a jury we will settle this thing right here and now," and the court said, "Mr. Hood, will that suit you? Will you agree to that?" But Mr. Hood declined to do it.

After consultation he finally asked the judge to pass it over until the next morning—that is, whether or not he would withdraw the demand for a jury. The next morning, instead of asking leave to withdraw his demand for a jury, he filed a petition asking leave to withdraw his answer.

Senator CLARKE, of Arkansas. How much fee was allowed by the court on account of originating the proceeding, and how much did you get and how much did Benners get?

Mr. BLACKBURN. The question of the allowance of fees has not been passed upon.

Senator CLARKE, of Arkansas. When it is passed upon and the award made, you will get part of it and Benners will?

Mr. BLACKBURN. I presume so. I do not know.

Senator CLARKE, of Arkansas. Is there anything in the state of the record that would make that doubtful?

Mr. BLACKBURN. The only question settled at all is the adjudication. All other matters are reserved.

Senator CLARKE, of Arkansas. The adjudication upon joint petition?

Mr. BLACKBURN. The consolidated petition.

Senator CLARKE, of Arkansas. Under the rule the attorneys representing the respective petitions would share in whatever fee is allowed?

Mr. BLACKBURN. I presume so. I do not know how that would be.

Senator CLARKE, of Arkansas. If it was adjudicated on the Benners petition he would get the fees?

Mr. BLACKBURN. Yes, sir.

Senator CLARKE, of Arkansas. If it was adjudicated on yours——

Mr. BLACKBURN. We would get the fee.

Mr. Benners at this very time urged the court to allow his amendment to his petition, and stated frankly he had some doubt whether or not he could obtain an adjudication on his petition; some doubt—I think he had come to see it—that it was not a corporate act—I refer to the letter written by Mr. Hood. The court then said to Mr. Benners, “Mr. Benners, can it be possible that you have presented a petition to me and obtained an order putting this vast estate into the hands of receivers on a petition that did not allege an act of bankruptcy and on a petition that you could not approve?” Mr. Benners seemed to be very much exasperated over the remark of the court. That was in open court. Benners finally admitted that possibly he would have to have those acts of bankruptcy in his petition, in order to get an adjudication. It was a very serious question to the court whether the petition should be allowed, because, as he said there, here were those large properties put into the hands of receivers, a \$300,000 bond executed, and then have the whole thing fall through. It might embarrass not only the estate, but the receivers and the original petitioning creditors. That seemed to be the starting point of Mr. Benners not feeling exactly that he had been treated right in this matter.

The delay in this matter, in my opinion, is attributable directly to the pleadings in this case as prepared by Mr. Hood and by Mr. Benners. If Mr. Benners ever had a half dozen cases in bankruptcy or even that many before this I do not know it, and I have practiced in the bankruptcy court every day there. I want to state that I have been a practicing attorney in the State and Federal courts in Birmingham for the past sixteen years.

There is one other matter, and then I am through. When I noticed in the papers that a charge had been lodged with this committee against Judge Hundley for his action in the appointment of receivers in this matter and his failure to appoint the Adlers, I went to Judge Hundley's office voluntarily and told him that I had noticed where he was being attacked for his action in that matter. This was two or three months afterwards. I said to him “Judge, you remember we were there strenuously resisting the appointment of the Adlers. We did not think they ought to be appointed. We presented to you and argued to you the collusion between the Adlers and the bankrupt, and I do not think it is a just charge to be filed against you, and I am unwilling to see those charges made, being in the position I am and knowing the facts and the circumstances under which you appointed those receivers, and remain silent, and if at any time you can use me in this matter—if it becomes necessary to go to Washington, I am willing to do it.”

Senator KNOX. Did you oppose the appointment of the receivers on the ground that this lawyer had no authority to make that declaration of bankruptcy at the time?

Mr. BLACKBURN. No, sir; I did not.

Senator KNOX. So far as you were concerned you were in a position of acquiescence at the time they were appointed?

Mr. BLACKBURN. Yes, sir. I want to say that everybody conceded that it was necessary to appoint receivers. There is no question about that.

Senator KNOX. Did you have some doubt about the jurisdiction of the court to appoint receivers under those allegations?

Mr. BLACKBURN. I expected to get it under my petition. That was my point exactly.

Senator KNOX. But your petition was not in at the time the receivers were appointed?

Mr. BLACKBURN. We had it prepared before we ever left Birmingham. We had only a few hours to get all these matters up. We could not take the original petition with us. The only petition we carried——

Senator KNOX. Let us look at it as it was and not as you expected it to be. What is your opinion: Do you think the court had jurisdiction under those allegations to appoint receivers in bankruptcy?

Mr. BLACKBURN. That is a matter of law. I do not think it did; rather, I do not think they could have got an adjudication on that petition on the acts as alleged there.

Senator KNOX. Is not that a jurisdictional fact that has to appear to the court at the time the receivers are appointed?

Mr. BLACKBURN. Yes, sir.

Senator KNOX. That there has been an act of bankruptcy?

Mr. BLACKBURN. Certainly.

Mr. WOOD. I should like to say that the record shows that the demurrer to the petition was overruled, and there was no exception to it.

Senator KNOX. That would not change the question of law in any way.

Senator CLARKE, of Arkansas. Did you have it in your mind at the time you went to Huntsville?

Mr. BLACKBURN. No, sir.

Senator CLARKE, of Arkansas. Did you know its value as a point?

Mr. BLACKBURN. No, sir; I had not seen the petition.

Senator CLARKE, of Arkansas. Hood resisted in every way a trial on the petition you filed and facilitated in every way he could a trial on Benners's petition?

Mr. BLACKBURN. Yes, sir; exactly so.

Senator CLARKE, of Arkansas. He was willing that the adjudication should take place on that petition, regardless of its alleged defects, and was unwilling that it should take place on yours?

Mr. BLACKBURN. Yes, sir.

Senator CLARKE, of Arkansas. Even to the point of denying that the concern was insolvent?

Mr. BLACKBURN. Yes, sir; he stated that in open court.

Senator KNOX. Is that all, Mr. Blackburn?

Mr. BLACKBURN. There is just one other matter that I wish to refer to, and I am then ready for any questions.

I read from pages 148 and 149 of Mr. Benners's testimony given before this committee:

Representative BURNETT. I will ask you about the signatures of quite a number of lawyers there petitioning for his confirmation. Just state to the Senators about that.

Mr. BENNERS. Judge Hundley got a very meager indorsement from the bar of Alabama prior to his appointment. As I understand it, his appointment was originally of a tentative nature, at least before it was announced by the press.

Then further along Mr. Benners says:

I want to say to the committee, if that statement is of any value as shedding any light on this case, that I have recently discussed with the leaders of the Birmingham bar—nine-tenths, I should say, perhaps not so large a fraction, that practice in his district, being in Birmingham—I discussed at some length with the leaders of the Birmingham bar his fitness to be a judge, and I believe it to be the unanimous opinion of the responsible lawyers at that bar that should there be the slightest intimation given that his nomination would not be confirmed, I believe they would be open in their protest against his confirmation.

I want to say that I do not believe that any such sentiment as that exists in the Birmingham bar, either among the so-called leaders or any other members of the bar. After Judge Hundley had been on the bench and served as a judge in Birmingham for one or two terms, and elsewhere in the district, that the lawyers of the district had had an opportunity of seeing his judicial temper, his quick dispatch of business, and his demeanor on the bench, and manner of turning off business—I say after they had had an opportunity of trying Judge Hundley as a judge, his father-in-law, Capt. Frank P. O'Brien, carried a petition around the bar for signatures, and I think I can safely say that 95 per cent of the members of that bar signed that petition. I have seen it, and I know the names on it, and I know I am safe in saying that 95 per cent of the members of the bar have signed his petition for confirmation, and not only have I heard no one say that he did not think he ought to be confirmed, or that he ought not to be a judge, as Mr. Benners here expresses it, but so far as I know Judge Hundley has given entire satisfaction.

It is true I am a loser in the lawsuit. I did not get what I went after, but I think Judge Hundley acted conscientiously, and in consolidating these petitions I think he did what he ought to do; and if the properties are to be sold, they will be sold under a valid order and a valid decree of the court. And I do not think that for any pique that may have arisen in this place any lawyer should resort to that as a means of resisting the confirmation of Judge Hundley.

As I say, I have practiced before him a good deal, and have noticed him in trying cases, and he has tried them with promptness, and as he sees the law and the fact, as I believe.

One other matter: Some question was asked about other candidates applying. So long as there was a possibility of a Democrat being appointed, I indorsed the application of E. K. Campbell.

Senator CLARKE, of Arkansas. The gentleman who has just testified here?

Mr. BLACKBURN. Yes; the gentleman who testified here.

But I want to say also that I thought it right that a Republican should be appointed, other things being equal. We have two Democrats, Judge Toulmin, of the southern district, and Judge Thomas K. Jones, of the middle and northern district, and if men could be found in the Republican party for appointments of that sort, I believe they ought to go to the dominant party. That is my doctrine. I believe

Judge Hundley ought to be appointed and ought to be confirmed without delay. That is my mind. That is all I have to say.

Representative RICHARDSON. You did not join with the bar of Birmingham in indorsing a Republican?

Mr. BLACKBURN. I do not recall that I did.

Representative RICHARDSON. You had the chance to indorse a Republican, but you did not indorse one; you had an opportunity to indorse a Republican who stood well throughout the State of Alabama and was indorsed by the Democrats who participated in the bar meeting, but you did not indorse that Republican?

Mr. BLACKBURN. I did not indorse that bar meeting.

Representative RICHARDSON. Judge Hundley's court was in session; he was presiding on the bench, when Frank O'Brien, his father-in-law, was carrying the petition around to get lawyers to sign it?

Mr. BLACKBURN. Yes.

Representative RICHARDSON. That is a fact, is it not?

Mr. BLACKBURN. That is a fact.

Representative RICHARDSON. Lawyers were practicing and he was presiding, and Senators Morgan and Pettus were known to have opposed him, and the idea prevailed that they being dead he would be confirmed, and that petition was carried around generally around the bar of the city when he was holding court; is not that the fact?

Mr. BLACKBURN. Part of it is a fact, and part not.

Representative RICHARDSON. You knew that Senators Morgan and Pettus were dead?

Mr. BLACKBURN. Yes.

Representative RICHARDSON. And that the petition was being carried around?

Mr. BLACKBURN. Yes.

Senator CLARKE, of Arkansas. Do you understand that Senator Morgan opposed him?

Mr. BLACKBURN. I did not understand that Senator Morgan ever opposed him. Is it a fact?

Representative RICHARDSON. I think so, decidedly, if you want my opinion. I am not a witness. [To the witness.] But you knew that Senator Pettus opposed him?

Mr. BLACKBURN. That I understood.

Representative RICHARDSON. And the idea prevailed that these two Senators from Alabama being dead, his confirmation would certainly take place, and at that time he was presiding on the bench, and this petition was circulated?

Mr. BLACKBURN. I do not think the idea that these two gentlemen were dead would cut any figure in the matter.

Representative RICHARDSON. You do not?

Mr. BLACKBURN. I do not, speaking for myself. If I thought Judge Hundley a competent man, I would not care whether Senator Pettus or Senator Morgan, or both, indorsed him, and I give the same credit to the other members of the bar.

Representative RICHARDSON. You say the matter of attorneys and lawyers has not been passed on yet?

Mr. BLACKBURN. No, sir.

Representative RICHARDSON. How long did these receivers, Thompson and Chandler, and Adler and Bush serve?

Mr. BLACKBURN. I believe they qualified on the 26th or 27th of October, 1907, and served until they were succeeded by the election of trustees at the first meeting of the creditors of the Southern Steel Company, which was held in Birmingham February 4, 1908.

Representative RICHARDSON. About three months?

Mr. BLACKBURN. I have given the date; a little over three months; yes, sir.

Representative RICHARDSON. Do you know what charges they put in for their services, each one?

Mr. BLACKBURN. If they have filed any petition for an allowance, I do not know it.

Representative RICHARDSON. You have not heard that it was \$7,500 each?

Mr. BLACKBURN. No, sir; I have not.

Representative RICHARDSON. If that is a fact, you have not heard it?

Mr. BLACKBURN. No, sir; I have not.

Representative RICHARDSON. Do you know whether Mr. Thompson, the receiver, paid any attention to the business, or ever visited the works at all during his incumbency as receiver?

Mr. BLACKBURN. I do not know whether he visited the works as receiver, but by scanning this report of the receivers, and the way it is gotten up, you will see that they have done a magnificent piece of work.

Representative RICHARDSON. I am not talking about that, but about the receivership.

Mr. BLACKBURN. Mr. Thompson was one of the receivers.

Representative RICHARDSON. I understand that; but I ask if you have any knowledge, information, or belief that Mr. Thompson ever visited the works at all during his incumbency?

Mr. BLACKBURN. Not to my knowledge; I have not.

Representative RICHARDSON. Now, it was a surprise to you, Mr. Blackburn, was it not, that Mr. Thompson was appointed a receiver?

Mr. BLACKBURN. No, sir; it was not.

Representative RICHARDSON. Was it not largely commented upon in the public press throughout the section there, the Birmingham mineral district—the appointment of Mr. Thompson as receiver of that great establishment?

Mr. BLACKBURN. My understanding was that a very responsible firm in Birmingham, Frank S. White & Sons, had recommended the appointment to Judge Hundley over the 'phone—the appointment of Mr. Thompson.

Representative RICHARDSON. That is what you understood?

Mr. BLACKBURN. Yes.

Representative RICHARDSON. Did you not understand before you went to Huntsville that there would be two receivers?

Mr. BLACKBURN. I did not.

Representative RICHARDSON. Mr. Thompson was, and is yet, one of the political referees appointed by the President?

Mr. BLACKBURN. Yes.

Representative RICHARDSON. At the time he was appointed receiver, he was also internal revenue collector?

Mr. BLACKBURN. Yes.

Representative RICHARDSON. And took a very active, energetic, and earnest part in the politics of the State?

Mr. BLACKBURN. Yes. He is a personal friend of the judge.

Representative RICHARDSON. He was an ardent supporter of the judge?

Mr. BLACKBURN. Yes; he was an ardent supporter and friend of Judge Hundley, as I understand it.

Representative RICHARDSON. He visited Washington in behalf of the appointment of the judge?

Mr. BLACKBURN. Well, I have not understood that as a fact.

Representative RICHARDSON. You do not know whether he came or not?

Mr. BLACKBURN. No, sir.

Representative RICHARDSON. Do you not know that he had been an ardent supporter of Judge Hundley's in his capacity as political referee for several years back—during the different applications that the judge has made for different offices?

Mr. BLACKBURN. Well, I think it was the fact, but I never understood that it was the unpardonable sin for a man to stand by his friends down our way.

Representative RICHARDSON. I am not talking about inferences, but facts. This committee will draw their deductions, not you and I.

Mr. BLACKBURN. Yes.

Representative RICHARDSON. You went to the judge at Huntsville on the theory that there was collusion between the Adlers?

Mr. BLACKBURN. Between the Adlers and the bankrupt.

Representative RICHARDSON. The judge did not agree with you on that, because he appointed one of the collusionists?

Mr. BLACKBURN. Well, he appointed also two very good men to hold the collusionists down.

Representative RICHARDSON. He appointed two excellent men, Thompson and Chandler, to hold the collusionists down.

Mr. BLACKBURN. That was the expression as you put it.

Representative RICHARDSON. Mr. Bush was not then a member of the board of receivers; he was afterwards appointed?

Mr. BLACKBURN. He was afterwards appointed.

Representative RICHARDSON. And you know it is a fact that these receivers did not raise any money at all to carry on the works?

Mr. BLACKBURN. That is my understanding—that they did not.

Representative RICHARDSON. Do you not know it is a fact further than that that Morris Adler was not only reputed to be, but was actually, one of the wealthiest men in that section, and under all the circumstances such as the financial stringencies then upon them, the banks not willing for any money to be paid, that he was more able and available to furnish money than any other one individual?

Mr. BLACKBURN. Possibly that may be true.

Representative RICHARDSON. Do you not know that he had just sold the Tutewiler property on which he realized a million dollars in cash?

Mr. BLACKBURN. I do not know anything about that.

Representative RICHARDSON. You heard of it?

Mr. BLACKBURN. I heard that he had made considerable money out of the property.

Representative RICHARDSON. And you knew that he was willing to furnish the money if he and his brother were appointed receivers?

Mr. BLACKBURN. I never heard that he offered to.

Representative RICHARDSON. Who constitutes the firm of Benners—is it Benners & Percy?

Mr. BLACKBURN. Walker Percy and Augustus Benners.

Representative RICHARDSON. Is it not a fact that they are reputed to be, and stand, very high at the bar of Alabama as lawyers?

Mr. BLACKBURN. Oh, yes.

Representative RICHARDSON. Just as high of character and professional integrity as any firm you could mention?

Mr. BLACKBURN. Yes, sir; I take pleasure in stating that about both the gentlemen. But in bankruptcy matters, I do not think Mr. Percy has ever appeared in bankruptcy cases, and I do not think Mr. Benners has appeared in more than two or three.

STATEMENT OF MR. A. LEO OBERDORFER.

Mr. OBERDORFER. Gentlemen of the committee, Mr. Blackburn and I were present at Huntsville at the time that receivers were appointed for the Southern Steel Company in bankruptcy. Prior to the filing of a petition in bankruptcy against that corporation it had been rumored in the streets of Birmingham that they were financially involved and that there had been conferences between the bankrupt and the Adlers and that it had been arranged that a friendly receivership should be appointed and that the Adlers were to be appointed receivers.

At that time myself and Mr. Blackburn and his partners had several claims against this concern. We found out that a petition in bankruptcy had been filed and that our suspicions were being carried out; that Mr. Benners, who was the regular attorney for the Adlers, and Mr. Hood had gone to Huntsville for the purpose of having the Adlers appointed receivers.

We wired to Judge Hundley not to appoint receivers until we could reach Huntsville and be heard. And fearing that that might not be sufficient, we called up over the long-distance telephone a correspondent of ours at Huntsville and asked him to appear in person before the court and ask for a continuance on our behalf.

A petition in bankruptcy had been filed on the 24th; also a petition for a receiver, but had been immediately returned by the clerk to counsel for the petitioning creditors and was not on record for examination of anyone.

However, it was rumored on the streets as to what act of bankruptcy was alleged and who was to be receiver. So we prepared our petition hastily, and with all the information before us, and appeared in Huntsville the following morning. We went to Judge Hundley's office at 9 o'clock, and met Mr. Benners and Mr. Hood in his office. In a short while Judge Hundley came in. Mr. Benners presented the petition. First a petition in bankruptcy, and then a petition for a receiver. He stated that Mr. Morris Adler was a financial genius, and that Mr. Edgar Adler had had great experience in managing similar enterprises.

As I recall it, and I think I am quite right, at no time during that *hearing* was there a positive representation made by Benners or any-

body else that the Adlers would furnish any amount of money or promise to do so.

Senator KNOX. Who all were present at this hearing?

Mr. OBERDORFER. Mr. Benners, Mr. Hood, Mr. Blackburn, myself, Mr. Chandler, and Judge Hundley's clerk.

Senator KNOX. Who was his clerk?

Mr. OBERDORFER. Who was it, Judge Hundley?

Judge HUNDLEY. Kenneth C. Charlton.

Mr. OBERDORFER. When he had finished presenting his matter (we had not examined the papers at all) Mr. Blackburn stated, on behalf of our clients, that we came there understanding that a petition would be presented, and that we appeared to oppose the persons who had been slated for the appointment of a receiver; that he believed to appoint the Adlers would be to put the bankrupt estate back into the bankrupt's possession; pointed out evidence of what we thought collusion.

We then suggested two other men. Immediately on our doing so Mr. Benners depreciated their experience, saying they had had no experience in that line. We also suggested a person who could manage this property and raise funds.

Judge Hundley told Mr. Benners and us during the hearing that he had been flooded with telephone calls regarding the matter. Before he took any further action he turned to Mr. Hood, who was sitting away from Mr. Benners, and said: "What have you got to say whether a receiver should or should not be appointed?" Mr. Hood said he thought a receiver should be appointed, and then went on to suggest that he thought the Adlers should be appointed.

Mr. Blackburn said that he thought that was a little irregular; that he could not understand what interest the bankrupt could have in the receivers; that the bankrupt surrendered all his estate to the receiver, and that was the end as to him.

We discussed the matter pro and con for an hour.

Judge Hundley then said that he would take the papers and consider them—all the papers that had been given to him—and would make his announcement from the bench at 11 o'clock. About that time he sent his clerk over to the court to have it adjourned so that he could consider it.

At 11 o'clock Judge Hundley went on the bench and announced those whom he had intended to appoint, giving his reasons. Mr. Benners was present. Mr. Hood was not. Judge Hundley said that he did not know Mr. Adler, but that it had been represented to him that he was a man of large experience in managing enterprises of that kind, and that he had appointed him on that representation.

It had been represented that there was a large part of this estate consisting of commissaries, and that a man acquainted with commissaries should be appointed. And the court said that he knew Mr. Thompson to be a man well acquainted with commissaries, having experience in them; he also made a statement as to J. O. Thompson, who is a very large real estate man and business man in Alabama, though he is the President's referee in political matters in that State.

We returned to Birmingham, and shortly thereafter there were rumors of some dissension among the receivers as to making a bond. Those matters I know nothing of personally, as the attorneys for the receivers had charge.

I understand that Mr. Benners has criticised Judge Hundley before this committee for another reason—for an alleged delay in the administration of this bankrupt estate after the filing of this petition. I submit the original petition.

Senator KNOX. One moment. I want to submit this to the committee. Does the committee think with the record before us we will be able to judge of that without going over it again?

Senator CLARKE, of Arkansas. Yes.

Senator KNOX (to the witness). I think you need not go into it again, unless Judge Hundley wishes it.

Judge HUNDLEY. No.

Senator KNOX. Then you need not go into that.

Mr. OBERDORFER. There is one matter I wish to mention. Even as late as December Mr. Benners, who filed this original petition, apprehending that he could not prove the allegations of his original petition, filed a third petition, under which an appearance was made, which further complicated the record. To show his inexperience in the bankruptcy law and its practice, he alleged as an act of bankruptcy the appointment of receivers under another bankruptcy petition filed in Tennessee and Georgia, attempting to make it appear to the court that a receiver being appointed to take charge of an estate was an act of bankruptcy. The record will show that when these reports came in they were acted upon promptly and that our time was limited.

Senator CLARKE, of Arkansas. You insist whatever delay there was in adjudicating the estate as bankrupt or in bankruptcy was not due either to your firm or to the action of Judge Hundley?

Mr. OBERDORFER. Yes, sir.

Senator CLARKE, of Arkansas. And was brought about by the action of the attorney for the bankrupt corporation and Mr. Benners?

Mr. OBERDORFER. Yes, sir. His first petition drew the fire of five leading firms in Birmingham.

Senator CLARKE, of Arkansas. Judge Hundley did not delay the adjudication of bankruptcy for any ulterior purpose?

Mr. OBERDORFER. No.

One more statement. It has been charged here that since Judge Hundley has been on the bench he has not met with the favor of the bar in his district. I want to say that I have come in contact with a large number of lawyers of my State, and some of other States, and all the lawyers are more than pleased with the dispatch of business, and the ability with which Judge Hundley has been conducting his office and dispatching the business from it, and especially in view of the fact that that is a new precedent in our part of the country.

Representative RICHARDSON. At the time of the conversation you had at Huntsville with the gentlemen present, you had not heard that Mr. Thompson was likely to be appointed receiver?

Mr. OBERDORFER. I only heard this: Judge Hundley stated to us—

Representative RICHARDSON. But I mean before that.

Mr. OBERDORFER. No, sir.

Representative RICHARDSON. And you did not hear anything in the conversation that you and those gentlemen had?

Mr. OBERDORFER. No, sir.

Representative RICHARDSON. You were opposed to the Adlers?

Mr. OBERDORFER. Yes.

Representative RICHARDSON. And the judge said he would announce his decision at 11 o'clock that same day?

Mr. OBERDORFER. Yes.

Representative RICHARDSON. And the judge went from the chambers, and you did, too?

Mr. OBERDORFER. No; we went into the chambers after.

Representative RICHARDSON. The judge did not say anything about Mr. Thompson and Mr. Chandler being likely to be appointed receivers?

Mr. OBERDORFER. He did not tell me anything about it.

Representative RICHARDSON. And the announcement was made that Mr. Thompson and Mr. Chandler were to be appointed receivers?

Mr. OBERDORFER. I think that that is substantially what I said before.

Senator CLARKE, of Arkansas. Did you not hear the judge say before leaving his law office that Frank White & Sons had telephoned him?

Mr. OBERDORFER. No; he told us that innumerable persons had been suggested by telephone, and persons had telephoned him, and that he had been deceived.

STATEMENT OF MR. STERLING A. WOOD.

Mr. WOOD. Gentlemen of the committee, the first I heard of the bankruptcy of the Southern Steel Company was on October 25, 1907. A friend advised me, and I was subsequently advised by wire from Mr. A. Leo Oberdorfer that I had been appointed special master. I never heard of the matter before.

I had previously been private secretary to the supreme court for four years, and afterwards clerk of the supreme court for four years. I had known Judge Hundley about twenty-five years as a personal friend and otherwise. I met him at the legislature very often, and met him at the supreme court, while he was attorney for the Nashville, Chattanooga and St. Louis Railroad, and where he had considerable other business, and very often filed briefs. The members of the court at that time were Chief Justice Stone, and Judges Brickell, Clopton, Sommerville, and McClellan.

Judge Stone very often commented on Mr. Hundley's briefs; and the Alabama Reports show that he was almost universally successful in his cases.

My specialty is commercial law, and that fact has thrown me a great deal in with the commercial men of Birmingham. At present I am president of the Commercial Club of Birmingham, composed of several hundred members, organized for commercial purposes.

This matter was referred to me as special master, and I took it up at once, giving to it all the time that was asked by counsel.

The first hearing was upon the demurrers to the original petition. The original petition, which has been spoken of here, is fair upon its face. The question was, the proof of the act of bankruptcy as alleged. This was alleged in the words of the statute, but the question was whether they could prove the corporate act, and that has been the trouble throughout this case, that the original corporate act could not be proved; that is to say, there were a half dozen or more demur-

rers. We had a hearing on them, and extensive arguments and briefs.

I overruled the demurrers, and made a report to the court, which was in favor of Messrs. Percy & Benners. Notwithstanding that they had gained their case on demurrers, they proceeded to amend, and they filed their first amendment on November 11. That was objected to. They withdrew that and filed a second amendment on November 29, which bears date that it had been filed November 15. Then at successive stages of this case they have filed numerous pleadings, attempting to perfect a petition which was already perfected by the overruling of the demurrers, but attempting to get in something else than was in the original petition.

We then had a hearing, and it was arranged that we should proceed to take testimony before Judge Hundley ruled on these various matters of pleading, and the testimony was submitted to this committee on the various acts of bankruptcy which were set up by Percy & Benners's original petition, as amended or as sought to be amended. The court reserved the right as to what it should do in that regard. Continuances were made by reason of continual addition to the pleadings on their behalf, and the other parties of course contended that their petition should be heard first, and they filed petitions to that effect on the ground of collusion, and so forth, which I will not go into.

Five decrees were made in this case—three the same day that the matters were presented to Judge Hundley and two the day afterward.

There is a suggestion in Mr. Benners's testimony that this case is filled with cunning and chicanery. The judge has had very little to do with this case since he referred it, except two or three hearings. It has all been done before me as special master. I am pleased to say that Mr. Benners and Mr. Hood have not objected to any report I have made or thing I have done in the case. Since this hearing has begun they have each said that they did not intend anything they had said here as a reflection on me, and they would recommend me as special master in the case.

We now come to the meeting of the creditors. This testimony was ordered by Judge Hundley in the decree to be taken with all convenient speed. That is the reason the receivers had reported to the court they were ready to turn over; that they could not go any further; that they could not market their product, if they made any, owing to the conditions; that they had run their rope. The court therefore ordered that the testimony be taken with all convenient speed and reported.

The special master took the testimony and made report, and the report was substantially that there was very grave doubt as to whether either party was entitled to an adjudication on either petition; that is to say, grave doubt as to whether Mr. Benners had proved his petition or had proved on it as he had sought to amend it. But at the same time, as each party had sought that the concern be adjudged a bankrupt, it was decided that it should be adjudicated on the general muster. There is the way this stands. It is very doubtful whether any act of bankruptcy has been proved on a careful consideration of the record.

It was then adjudicated, and we had the first meeting of creditors. That was held in the court room, because the referee's office was too

small. I should say there were from 200 to 300 people present, many representing creditors, and some representing themselves. R. E. Collins was one.

I filed a stenographic report of the entire proceedings, and the court came on the bench in the morning. Mr. Bradley represented people who had several hundred thousand dollars of claims. The court said he would order the proceedings to go ahead the first meeting to be had. The court then took a recess, and the first meeting of creditors was held. There were some million dollars of creditors represented out of the \$7,000,000—about \$4,000,000 secured, and about \$2,500,000 unsecured. There were some contests during the day on immaterial propositions.

J. O. Thompson was nominated as trustee. He came in afterwards and stated that it was unauthorized; that he had requested some parties that they would not nominate him, and that he had authorized other parties to say that he could not accept. After getting through with these matters we proceeded to the election, and we held it. The report of the meeting shows W. P. G. Harding, who is president of the First National Bank of Birmingham and had a power of attorney in connection with Mr. Paschal Shook to vote on some unsecured creditors' claims representing some \$400,000 of claims, at that meeting. Mr. Harding moved that a vote of thanks be tendered to the receivers of the estate for their able, conscientious, and careful work. Mr. Benners was sitting directly in front of me across the table. I was presiding over the meeting. And very much to my surprise he said, in a very loud voice: "I second the motion." There were a half dozen other gentlemen in the room who seconded the motion, among them Mr. Rudolph, attorney for the gentleman who represented Marshall Field, of Chicago. I put the motion to the house and it was unanimously passed. Several gentlemen remarked that the Southern Steel Company had ended in a love feast, and I thought so at that time. I proceeded to report who had been elected trustees. The judge confirmed the trustees after a considerable hearing.

There were sundry attorneys who filed exceptions to my report—attorneys for the second petitioning creditors, as they are called; but as I understand there are four or five petitions filed in bankruptcy against this estate, but all these have been consolidated and transferred, and an adjudication was had upon them all, by unanimous consent of all parties concerned.

Now, concerning Judge Hundley's position in the district as judge. I have known Judge Hundley for twenty-five years. We have been thrown together a great deal and on various occasions. He appointed me to this responsible position without any solicitation on my part. After Mr. Campbell was out of the race I telegraphed to the President that if he would appoint Mr. Hundley I believed he would make a record in that State as a Federal judge which would be second to none who ever held office in Alabama. I believe he has made good. I believe that by his accuracy and by his dispatch and by his attention especially to bankrupt estates he has gained the approval of all the people of that community. We have had some bankrupt estates in that community which have been looted—and I use that term advisedly—by friendly action on the part of parties interested, by not being careful to have disinterested parties act in bankruptcy proceedings, and I believe the unsecured creditors of this estate and in that district are very glad of the fact that Judge Hundley will not

take the suggestion of the first lawyers who get to him as to who should be appointed receiver of an estate.

Representative RICHARDSON. Do any judges do that down there?

Mr. WOOD. Yes, sir; I think it has been the general practice, and I am sure it is too much of a practice elsewhere.

Representative RICHARDSON. What Federal judge has done that?

Mr. WOOD. I think Judge Jones has done that. He has done that for me, and I think a great many judges do it.

Representative RICHARDSON. Did you complain to the judge about that?

Mr. WOOD. No, sir; I thanked him for it. I was on that side of the case.

Senator CLARKE, of Arkansas. Has it ever come to your notice that it has been necessary to discontinue the operation of the plant of that company because of the inability of the receiver to raise funds to carry on the business?

Mr. WOOD. It has not. The receivers' report shows that they could not have sold the product on any reasonable terms of cash, owing to the commercial conditions of the country.

Senator CLARKE, of Arkansas. Then, if it were true that four or five hundred thousand dollars of securities could be negotiated, they would have no use for the money?

Mr. WOOD. No, sir; other concerns there shut down at the same time.

Senator CLARKE, of Arkansas. Did you have any notice that the receivership was proving inefficient on account of want of funds?

Mr. WOOD. Never.

Senator CLARKE, of Arkansas. Are you sufficiently familiar with the reports made by these people from time to time to say whether they had more money on hand than was necessary for the administration of the estate?

Mr. WOOD. I do not think that they ever had any occasion to borrow any funds. Possibly at one time they borrowed \$30,000, but they had money on hand from time to time arising out of bills receivable of the estate after going into bankruptcy.

Senator CLARKE, of Arkansas. What is your understanding of the state of the concern now?

Mr. WOOD. They have on hand something like one hundred or more thousand dollars of money belonging to the estate.

Senator CLARKE, of Arkansas. The trouble, then, arises from the fact that it is not deemed profitable to work the concern, and not because it is short of funds?

Mr. WOOD. That is it; and the testimony shows that the plant had been operated at a loss for several years.

Representative RICHARDSON. You say that Judge Hundley has pursued a course of failure to recognize in a preferential way the lawyers at the bar—different from what Judge Jones had done?

Mr. WOOD. Yes.

Representative RICHARDSON. That Judge Jones had—in what case do you refer to?

Mr. WOOD. I did not mention the case. I said it had been the general custom in that district to give the preference to the attorney who reaches the judge first as to who shall be named as receiver, and the judge does not take the matter into consideration, in my opinion, long enough to make a disinterested appointment.

Representative RICHARDSON. And Judge Jones had made a ruling in your favor, while attorney, in which it was wrong to give that preference?

Mr. WOOD. No, I said that I had presented petitions to Judge Jones for the appointment of receivers in bankruptcy, whom he has appointed, and although having given preference to my clients in that way I should prefer that it should not be the general rule.

Representative RICHARDSON. The favor was done for you, although you think the favor was not right, from the bench?

Mr. WOOD. No; because I do not think it favored the petitioner's interests as much as it ought to do, although I do not think the administration of the estate had done anything wrong; but I should prefer that the judges would take these matters into consideration, because I am interested on both sides.

Representative RICHARDSON. You are familiar with the supreme court decisions of Alabama, as you have been there a long time, and took occasion to refer to some supreme judge as having commended Judge Hundley highly for his briefs. I am not going to ask you as to particulars to test your memory on that, but when you get home I would like to have you give us a reference to the instances where Judge Hundley appeared during the last twenty years.

Mr. WOOD. I will have much pleasure in doing so.

Representative RICHARDSON. The cases and the Alabama decisions.

Mr. WOOD. Yes.

Representative RICHARDSON. You were at that bar meeting?

Mr. WOOD. Yes; I was at the bar meeting. That bar meeting was gotten up in my opinion by——

Representative RICHARDSON. I just asked you if you were there?

Mr. WOOD. Yes; but I did not remain to vote, because I thought it was a cut-and-dried affair.

Representative RICHARDSON. A cut-and-dried affair of Democratic lawyers supporting a Republican?

Mr. WOOD. No, sir; that meeting was dominated by two Republican lawyers, Mr. Davidson and Mr. Vaughan.

Representative RICHARDSON. Were not the majority of the men attending that bar meeting Democratic lawyers?

Mr. WOOD. Yes, I think there were about fifty Democrats and two Republicans.

Representative RICHARDSON. And the two Republicans were so sharp that they dominated all the Democrats, and the first choice of the Democrats was a Republican and the second choice a Democrat?

Mr. WOOD. They started that way, but when they got to thinking that the President had appointed Democrats, they did not know just what to do about it, as they did not like to put the Republican second, but they finally wound around with a resolution to indorse both of them.

Representative RICHARDSON. To indorse both a Democrat and a Republican?

Mr. WOOD. Yes. I did not stay until the end; I left before that.

Representative RICHARDSON. You believe that a Republican ought to be appointed in Alabama as a Federal judge?

Mr. WOOD. I am not so strong as Mr. Blackburn on that. I think a Democrat ought to be appointed.

Representative RICHARDSON. There were already two Democrats there?

Mr. WOOD. Yes. If we can not get a Democrat, I think the best Republican ought to be appointed.

Representative RICHARDSON. Do you not remember Judge David D. Shelby—you know him?

Mr. WOOD. Yes.

Representative RICHARDSON. A man who stands very high and is now on the fifth circuit of the court of appeals?

Mr. WOOD. Yes.

Representative RICHARDSON. Do you not know that he is a Republican—a life-long Republican?

Mr. WOOD. Yes.

Representative RICHARDSON. And do you not know that the bar of Alabama, including the two Senators, indorsed Judge Shelby for circuit judge?

Mr. WOOD. Yes.

Representative RICHARDSON. And they knew he was a Republican?

Mr. WOOD. Sure.

Representative RICHARDSON. And they stood by him all over Alabama?

Mr. WOOD. Yes.

Representative RICHARDSON. As far as you know?

Mr. WOOD. Yes.

Representative RICHARDSON. At his home town, and at Birmingham, and throughout the State?

Mr. WOOD. I do not think any Democrat was suggested as having any chance at all.

Representative RICHARDSON. None at all. And they put Shelby right in without prejudice?

Mr. WOOD. Yes.

Senator CLARKE, of Arkansas. We have Republicans who are Democrats in local matters, and Republicans in national affairs. Judge Shelby was that kind of a Republican, was he?

Mr. WOOD. No, sir; he was a Republican in all matters.

I submit in evidence to the committee these records:

Memoranda of copies of papers submitted to subcommittee of Senate Judiciary Committee, in re Judge Hundley's confirmation.

No.	Name.	Date.
1	Petition, original, by Bham. Ore and Iron Co.	Oct. 24, 1907
2	Petition for receivers Bham. Ore and Iron Co.	Do.
3	Petition Crane Co. et al. in bankruptcy.	Oct. 25, 1907
4	Petition Crane Co. for receivers.	Do.
5	Decree appointing receivers first.	Do.
6	Report receivers as to difference of opinion.	Oct. 30, 1907
7	Decree appointing receivers second (Bush).	Nov. 1, 1907
8	Report special master as to demurrers.	
9	Amend. petition Bham. O. and M. Co.	Nov. 11, 1907
10	Second amend. petition Bham. O. and M. Co.	Nov. 29, 1907
11	Second amend. petition Bham. O. and M. Co., on motion, strike amend.	Dec. 6, 1907
12	Petition Du Bose Bros. to hearing 7980, first.	Dec. 9, 1907
13	Report of receivers.	Dec. 13, 1907
14	Report master on motion first hearing, 7980.	Dec. 23, 1907
15	Decree ordering taking testimony.	Jan. 7, 1908
16	Testimony before special master.	Jan. 20, 1908
17	Report master as to adjudication.	Jan. 19, 1908
18	Opinion judge as to adjudication.	Jan. 21, 1908
19	Decree of adjudication.	Jan. 22, 1908
20	Report referee as to election trustees.	Feb. 4, 1908
21	Decree as to trustees.	Do.
22	Answer of Southern Steel Co.	

Original petition of Crane Company et als., filed October 25, 1907.

In the district court of the United States for the southern division of the northern district of Alabama. In the matter of Southern Steel Company, bankrupt. In bankruptcy.

To the honorable OSCAR R. HUNDLEY, judge, etc.—

The petition of Crane Company, a corporation organized and existing under the laws of the State of Illinois, doing business in the city of Birmingham, Alabama; Roberts-Johnson & Rand Shoe Company, a corporation organized and existing under the laws of the State of Missouri, doing business in the city of St. Louis, State of Missouri; M. R. McNeil, doing business in the city of Birmingham, Alabama, and M. B. Du Bose, doing business under the firm name and style of Du Bose Bros. Iron Company, respectfully represents:

That the Southern Steel Company, a body corporate organized and existing under the laws of the State of Alabama, in said district, has for the greater portion of six months next preceding the date of the filing of this petition has its principal place of business in the city of Birmingham, Jefferson County, and Gadsden, Etowah County, Alabama, in said State and district aforesaid, and owes debts to the amount of one thousand dollars and over, and is insolvent, and is neither a wage-earner nor a person engaged principally in farming or the tillage of the soil.

That your petitioners are creditors of the said Southern Steel Company having provable claims in the aggregate in excess of securities held by them to five hundred dollars and over; that neither of your petitioners is entitled to priority of payment on its or his claim within the meaning of section 64b of the bankruptcy law of 1898, nor has either of your petitioners received a preference within the meaning of section 60, a, b of such law as amended.

That the nature and amount of your petitioners' claims are as follows:

To the Crane Company in the sum of six thousand five hundred dollars, for goods, wares, and merchandise sold and delivered.

To Roberts-Johnson & Rand Shoe Company in the sum of eleven hundred one and $\frac{2}{100}$ dollars for goods, wares, and merchandise sold and delivered.

To M. R. McNeil in the sum of forty-eight hundred and forty-five and $\frac{1}{100}$ dollars for goods, wares, and merchandise sold and delivered.

To M. B. Du Bose, doing business under the firm name and style of Du Bose Brothers Iron Company, in the sum of seven hundred fifty-seven and $\frac{3}{100}$ dollars, for goods, wares, and merchandise sold and delivered.

Your petitioners further represent that the Southern Steel Company has been engaged in the manufacturing business, such as manufacturing steel, nails, and other merchandise, operating mines, furnaces, coke ovens, manufacturing plants, foundries, and other industries and properties of a like character.

Your petitioners represent that the Southern Steel Company is insolvent and that within the four months next preceding the date of the filing of this petition the said Southern Steel Company, while so insolvent, transferred portions of its property to Block-Pollak Iron Company, who was at that time one of its creditors, amounting to approximately five thousand dollars, with the intent to prefer such creditor over its other creditors.

Your petitioners further represent that the Southern Steel Company, while so insolvent, committed an act of bankruptcy in that it did on, to wit, the 15th day of October, 1907, and subsequent thereto on various and sundry dates, transfer portions of its property amounting to the sum of fifteen hundred dollars to Shook & Fletcher, who was at that time one of its creditors, with the intent to prefer such creditor over its other creditors.

That the Southern Steel Company, within four months next preceding the date of the filing of this petition, committed an act of bankruptcy in that it did heretofore on, to wit, the 24th day of July, 1907, and on various and sundry dates subsequent thereto, while so insolvent, transfer portions of its property to the Decatur Car Wheel Works, who was at that time one of its creditors, which property so transferred amounted to approximately three thousand dollars, with the intent to prefer such creditor over its other creditors.

Petitioners further allege that within four months next preceding the date of the filing of this petition the said Southern Steel Company committed an act of bankruptcy in that it did heretofore on, to wit, the 26th day of July, 1907, and at subsequent dates and times thereto, while so insolvent, transfer to Moore & Handley Hardware Company, who was at this time one of its creditors, portions of its property amounting to approximately five thousand dollars, with the intent to prefer such creditor over its other creditors.

And your petitioners further allege that the Southern Steel Company, within four months next preceding the date of the filing of this petition, on, to wit, the 18th day of October, 1907, committed an act of bankruptcy in this: That it did heretofore, on to wit, said date transfer while so insolvent, a portion of its property amounting to fifteen hundred dollars to the Birmingham Boiler Works, who was at that time one of its creditors, with the intent to prefer such creditor over its other creditors.

And your petitioners further allege that the Southern Steel Company, within four months next preceding the date of the filing of this petition, committed an act of bankruptcy in that it did heretofore, on the 28th day of July, 1907, transfer while so insolvent a portion of its property to the Prowell Hardware Company, which property so transferred amounted to approximately five thousand dollars, with intent to prefer such creditor over its other creditors.

And your petitioners further allege that the Southern Steel Company, within four months next preceding the date of the filing of this petition, committed an act of bankruptcy in that it did heretofore on, to wit, the 1st day of August, 1907, transfer while so insolvent a portion of its property, amounting to approximately five thousand dollars, to Wimberly & Thomas Hardware Company, who was at that time one of its creditors, with the intent to prefer such creditor over its other creditors.

Wherefore your petitioners pray that service of this petition with a subpoena may be made upon said Southern Steel Company, as provided by the act of Congress relating to bankruptcy, and that it may be adjudged a bankrupt within the purview of said act.

CRANE COMPANY,
 • By LEE J. MARX, *Attorney*.
 ROBERTS-JOHNSON & RAND SHOE CO.,
 By LEE J. MARX, *Attorney*.
 M. R. McNEIL,
 By _____
 DU BOSE BROS. IRON CO.,
 By M. B. DU BOSE.

Ward & Rudolph, Pugh & Marx, A. Leo Oberdorfer, attorneys for petitioning creditors.

STATE OF ALABAMA, *Jefferson County*:

M. B. Du Bose, doing business under the firm name and style of Du Bose Bros. Iron Company, and M. R. McNeil, two of the petitioning creditors herein, do hereby make solemn oath that the statements contained in the foregoing petition subscribed by them are true when stated as facts, and when stated upon information and belief they believe them to be true.

M. B. DU BOSE.
 M. R. McNEIL.

Sworn to and subscribed before me, this the 25th day of October, 1907.

T. M. DONHAM, *Notary Public*.

STATE OF ALABAMA, *Jefferson County*:

Before me, the undersigned authority, in and for said State and county, personally appeared Lee J. Marx, who, being by me duly sworn, deposes and says that he is the agent and attorney for Roberts-Johnson & Rand Shoe Company and Crane Company, two of the petitioning creditors named herein, and further states on oath that the statements contained in the foregoing petition are true when stated as facts, and when stated upon information and belief he believes them to be true; that he makes this affidavit for the reason that said creditors are nonresidents of the State of Alabama, and it is not convenient for an officer of said corporations to make said affidavit, and that he is more familiar with the facts alleged herein than the petitioners.

LEE J. MARX.

Sworn to and subscribed before me this the 25th day of October, 1907.

T. M. DONHAM, *Notary Public*.

Order appointing receivers.

In the district court of the United States, for the eastern division of the northern district of Alabama. In the matter of Southern Steel Company, bankrupt. In bankruptcy.

Whereas a petition for its adjudication as a bankrupt was on the 24th day of October, 1907, filed against the Southern Steel Company, of the city of Gadsden, of the county of Etowah, in said district, and said petition is still pending, and

Whereas it is satisfactorily made to appear that it is absolutely necessary for the preservation of the estate of said bankrupt that a receiver be appointed to take charge of and to hold the estate of the said bankrupt and to continue the business of said bankrupt; now on the motion of Augustus Benners, esq., attorney for the petitioners:

It is ordered that Elijah G. Chandler, Joseph O. Thompson, and Edgar L. Adler, of Birmingham, Alabama, in said district be and they are hereby appointed receivers of the estate of the said bankrupt, said receivers shall qualify by and their authority as such shall begin upon their filing bond as such receivers in the sum of three hundred thousand dollars, payable to the United States of America, with sufficient sureties to be approved by the clerk of this court, and upon the filing of such bond, such receivers shall take charge of, manage, and control such estate until otherwise ordered.

That said receivers be, and they are, empowered and directed to continue the operation of the mines, manufactories, and other business of said bankrupt wherever the same may be located until further ordered, and to pay out of any funds coming into their hands all unpaid wages due the workmen, clerks, and servants of said bankrupt.

That said receivers be, and they are, empowered and authorized for the purpose of operating said properties, to borrow from time to time, a sum not exceeding two hundred thousand dollars, and to issue therefor their certificates as such receivers, which certificates shall be a lien upon the property and estate of said bankrupt prior to all other liens and incumbrances.

It is further ordered that should said Southern Steel Company be adjudicated a bankrupt, said receivers shall continue as such, with the powers herein conferred, until the appointment and qualification of a trustee of said bankrupt.

It is further ordered, adjudged, and decreed, that the petitions filed in this cause, and all matters and things connected therewith, are hereby referred to Sterling A. Wood, esq., of Birmingham, Alabama, as special master, with full authority to summon witnesses, and the alleged bankrupt, and to take testimony of the same, to pass upon all questions of law and fact that may arise in this matter, and report his findings thereon to me.

Witness the honorable Oscar R. Hundley, judge of said District Court, in the city of Huntsville, in said district, on the 25th day of October, 1907.

OSCAR R. HUNDLEY,
*Judge of the District Court of the United States
for the Northern District of Alabama.*

Indorsed:

Filed October 25th, 1907, 12.30 p. m.

CHAS. J. ALLISON, *Clerk.*

A true copy:

[SEAL.]

CHAS. J. ALLISON,
Clerk, United States Courts, Northern District of Alabama.

Report of receivers as to difference of opinion.

In re Southern Steel Company. In bankruptcy.

To the Honorable OSCAR R. HUNDLEY,

Judge of the District Court of the Northern District of Alabama:

Your receivers, Joseph O. Thompson and Elijah G. Chandler, respectfully report and show unto your honor that heretofore they, together with Edgar L. Adler, were appointed by your honor receivers in bankruptcy of the Southern Steel Company, under petitions filed in the southern division of the said northern district and in the eastern division of the said northern district; that the said Thompson and the said Chandler executed a joint bond in the penal sum required by your honor's orders before entering upon the discharge of their duties as receivers; and that the said Edgar L. Adler executed a separate bond as receiver; and the said three receivers thereupon qualified as receivers. Your receivers first above named state that there has not been that unity of action or cooperation between the three receivers which is necessary in order to raise the moneys required to operate the large plants belonging to the said Southern Steel Company, the operation of which was ordered to be continued by your honor's decree; and they, therefore, report to your honor that, in their opinion, the said plants can not be operated and the moneys necessary to operate them procured by the said receivers, so long as the personnel of the receivership remains as at present constituted.

Therefore, as officers of this court charged with large responsibilities by virtue of their appointment, they deem it proper to bring the said matter to the attention of

this court, to the end that such action may be taken and such orders made by your honor as, in your honor's judgment, should be taken and had, under the facts presented; and to the end that the best interests of the trust committed to the charge of the receivers and of the parties in interest may be best subserved.

Respectfully submitted.

JOSEPH O. THOMPSON.
ELIJAH G. CHANDLER.

To EDGAR L. ADLER, Esq.:

Please take notice that the foregoing report has been filed and will be presented to Hon. R. Hundley at chambers at Huntsville, Alabama, at 12 o'clock noon October 31st, 1907, for such action as is deemed proper in the premises. You are respectfully requested to be present and advise with the court at said time.

JOSEPH O. THOMPSON.
ELIJAH G. CHANDLER.

BIRMINGHAM, ALA., *October 30, 1907.*

A copy of the within was this day handed Edgar L. Adler, esq., and a copy handed Augustus Benners, esq., of counsel for the petitioning creditors, upon this 30th day of October, 1907.

FORNEY JOHNSTON,
Of Counsel for Receivers.

Decree appointing T. G. Bush as receiver.

In the district court of the United States for the southern and eastern divisions of the northern districts of Alabama. In the matter of Southern Steel Company, bankrupt. No. 7977 and No. 239. In bankruptcy.

In these bankruptcy proceedings the report of the receivers coming on to be heard and considered by the court, come the three receivers and after a full investigation of the subject-matter of the said report it is considered, ordered, and adjudged by the court:

1. That T. G. Bush is hereby appointed a coreceiver of the property and estate of the Southern Steel Company with the three receivers heretofore appointed by this court, and shall with them exercise the powers heretofore or by this order conferred on the receivers in this matter. He shall qualify by giving bond payable to the United States of America in the sum of one hundred thousand dollars conditioned as required by law to be approved by the clerk of this court. In case there are more sureties than one, such sureties may severally qualify for a specific amount, but the aggregate of such specific amounts shall not be less than one hundred thousand dollars.

2. It being shown to the satisfaction of the court that it is necessary, in the best interests of, and for the preservation of, the estate of said bankrupt, that its business continue to be conducted, it is considered and ordered by the court that the plants, properties and business of the said bankrupt, Southern Steel Company, or such parts thereof as, in the opinion of the receivers of this court, may be advantageously operated, to be operated and conducted by the said receivers for the period of six months and thereafter until the further orders of the judge of this court, and that should any differences of opinion arise among the receivers, the decision of a majority in number of the receivers shall control the action of the receivership until the action be otherwise ordered by this court.

3. That the receivers of the court are authorized, empowered, and directed to take possession of, collect, manage, and control all of the properties, plants, assets, and effects of every kind and description of the said Southern Steel Company, in this and in other States, and the same to hold subject to the orders of this court; and they are authorized and empowered from time to time to employ such agents and employees as, in their judgment, are suitable and proper for the operation, conduct, or conservation of the properties, business, and assets of said bankrupt, and from time to time to pay the necessary expenses incurred in the management and conduct or conservation of the bankrupt estate, and they are authorized, empowered, and directed to take such steps and institute and prosecute such proceedings, actions, and suits as may be necessary or proper to reduce to possession any of the properties and assets of said bankrupt, and to collect and realize upon any claims, debts, or demands due or collectible for the benefit of said bankrupt estate, and in doing so to invoke the aid of other courts.

4. That said receivers are hereby ordered to pay wages due to workmen, clerks, and servants of the said bankrupt which have been earned by them within three months before the date of said bankruptcy proceedings not to exceed the amount limited by law.

5. Said receivers may make contracts for the transportation of freights and to that end and in that connection may pledge their receivers' certificates to secure the payment of the freight charges.

6. Except as herein modified, the former orders and decrees of this court in these bankruptcy proceedings are ordered by the court to continue of full force and effect.

Done at Huntsville, Alabama, at chambers, on this the first day of November, 1907.

OSCAR R. HUNDLEY,
District Judge.

REPORT ON MOTION TO STRIKE OUT AMENDMENTS.

In the district court of the United States for the northern district of Alabama. No. 7977. In re Birmingham Coal and Iron Company et al., petitioners, v. Southern Steel Company, respondent, in bankruptcy, southern division. No. 239. In re Birmingham Coal and Iron Company et al., petitioners, v. Southern Steel Company, respondent, in bankruptcy, eastern division. Before Sterling A. Wood, special master, at Birmingham, Ala., on the 2d day of December, 1907, in the above-entitled cause.

Present: Sterling A. Wood, special master; Percy and Benners, attorneys for petitioning creditors; O. R. Hood, attorney for respondent; Ward and Rudolph, Pugh and Marx, Powell and Blackburn, and A. Leo Oberdofer, attorneys for Crane Company et als., petitioning creditors, in No. 7980, southern division, and No. 240, eastern division; A. Leo Oberdofer, attorney for William L. Delheim & Co. et al., creditors; Pugh & Marx, attorneys for Sam. Locascio et al., creditors; Tomlinson & McCullough, attorneys for De Vorkin Brothers et al., creditors; Powell and Blackburn, attorneys for B. F. Roden Grocery Company et al., creditors; Ward and Rudolph, attorneys for Dubose Brothers et al., creditors; Campbell and Johnson and E. H. Dryer, attorneys for receiver; G. W. Yancey, attorney for Decatur Car Wheel Company et al., creditors; Stallings and Drennen, attorneys for Drennen & Co. et al., creditor; Frank S. White & Sons, attorneys for Marshall Field and Co. et al. creditors.

The undersigned special master respectfully submits to you the following report of the hearing upon the motion to strike from the file the amendment to the petition of the Birmingham Coal and Iron Company et al., which amendment was filed in this court on November 29, 1907.

On October 24, 1907, the original petition of the Birmingham Coal and Iron Company et al., was filed in this court, and, in addition to the statutory averments to give this court jurisdiction, alleged the following acts of bankruptcy:

"That within four months preceding the filing of this petition, namely, on October —, 1907, the said Southern Steel Company committed an act of bankruptcy in that it did admit in writing its inability to pay its debts and its willingness to be adjudged a bankrupt on that ground; and that said corporation did in a letter to the Sayre Mining and Manufacturing Company, written on, to wit, October 24, 1907, state, among other things, that said corporation was unable to pay its debts and was willing to be adjudged a bankrupt on that ground."

On November 11, 1907, the same petitioners filed in this court an amendment to their said original petition, and on the same day certain creditors of the said alleged bankrupt, that is to say, Sam Locascio, W. L. Delheim & Co., and B. F. Roden Grocery Company, filed exceptions to the said amendment, and on the same day the same creditors filed their motion to strike the said amendment from the file.

The foregoing exceptions and motions were set down for hearing on November 29, 1907, but on said day the attorneys for the original petitioning creditors appeared in open court and withdrew their said proposed amendment filed in this court on November 11, 1907, and then filed the further amendment above mentioned of November 29, 1907.

This matter was further set down for hearing on December 2, 1907, and on that day the above-named creditors appeared and moved to strike the said proposed amendment of November 29, 1907, on various grounds set forth in their said motion, and in the said motion to strike reassigned the grounds of the motion and exceptions above referred to and filed November 11, 1907, and refiled November 27, 1907.

It was agreed upon the hearing that the alleged bankrupt should have until December 4, 1907, to plead to the proposed amendment of November 29, 1907, and that this submission should be taken as of said December 4, 1907.

The proposed amendment of November 29, 1907, is in form very elaborate.

In paragraph 1 it sets forth the usual statutory averments as to bankruptcy alleged in the original petition, but with more detail, and then avers the act of bankruptcy set forth in the original petition exactly as it is averred therein.

Paragraph 2 sets forth the filing of a petition on October 25, 1907, in the district court of the United States for the eastern district of Tennessee, by the Nixon Mining Drill Company et al. against the alleged bankrupt, and that under the said petition G. W. Nixon had been appointed receiver within the said district, and had qualified and taken possession of the property of the respondent within that district.

Paragraph 3 sets forth that on October 26, 1907, the Trust Company of Georgia had filed its petition in the superior court of Dade County, Ga., alleging that respondent was insolvent, and praying the appointment of a receiver for the property of respondent within the State of Georgia, and that, pursuant to said petition, George F. Hurt had been appointed receiver, and had qualified and taken possession of the property of respondent in said State.

Paragraph 4 sets forth that on October 25, 1907, there were filed in the eastern and southern divisions of this district the petitions of the Crane Company et al. against respondent, praying that respondent be adjudicated a bankrupt, which petitions alleged the following acts of bankruptcy. The proposed amendment then sets forth in *hæc verba* the seven acts of bankruptcy which are set forth in the said petition of the Crane Company et al. and concludes by averring and charging that the said acts of bankruptcy had been committed by respondent.

Paragraph 5 sets forth that petitioners at the time of filing their original petition filed their petitions for the appointment of receivers for all the property of respondent, and that such receivers were appointed and had qualified and had taken possession of all of the property of respondents except such as was in the possession of the said G. W. Nixon, receiver, and of the said George F. Hurt, receiver.

Paragraph 6 of said proposed amendment sets forth that on account of the foregoing facts it was absolutely necessary that the respondent be adjudged a bankrupt in order that its property might be administered as provided in the act of Congress relating to bankruptcy.

Upon the hearing of the foregoing motion and exceptions the petitions in cause No. 7980, in the southern division, and No. 240, in the eastern division, filed by the Crane Company et al., petitioners, were offered in evidence, together with the answer of the respondent to said petitions, denying the several acts of bankruptcy set forth and demanding trial by jury, which answer was filed November 2, 1907. No other evidence was introduced in support of said motions or of said exceptions.

In cause No. 7979 it also appeared that the bankrupt had answered on November 2, 1907, and denied the act of bankruptcy alleged in said original petition; and further, that on December 4, 1907, it had answered the proposed amendment of November 29, 1907, and had admitted each and every averment therein except those contained in paragraph 4, relating to the act of bankruptcy set forth in the said petition of the Crane Company et al., and these were specifically denied.

All of the grounds set forth in the said motion to strike the proposed amendment were not urged in argument, but the following were urged in argument, which may be summarized as follows:

1. That the amendment was filed without leave, and no cause or excuse is shown why the matters and things alleged therein were not brought forward in the original petition.

2. That the proposed amendment was a substitution for the original petition, and contained averments and alleged acts of bankruptcy not germane to the matters alleged in the original petition.

3. That there was pending in this court the cause No. 7980, being the petition of the Crane Company et al., to have respondents adjudicated a bankrupt, and that such petition alleges earlier acts of bankruptcy, and that it was at issue on the answer of the bankrupt, and by rule 7 of the bankruptcy rules must be heard.

General Order XI deals with the subject of amendments. It provides:

"The court may allow the amendments to the petition and schedules on application of the petitioners. Amendments shall be printed or written, signed and verified, like original petitions and schedules. If amendments are made to separate schedules the same must be made separately with proper reference. In the application for leave to amend the petitioner shall state the cause of the error in the paper originally filed."

There is no application whatever filed for leave to make the proposed amendment, and none being filed, necessarily the petitioner does not "state the cause of the error in the paper originally filed," as required by the general order. That is to say, there is no application for leave to amend, and no excuse given for the error in the original petition; the motion to strike claims advantage of these alleged defects.

Judge Bradford, *In re Stevenson* (2 Am. B. R., 66-78; 94 Fed., 110), says of the foregoing rule, "Its purpose is to authorize the court to allow corrections to be made of errors, insufficiencies, and uncertainty in the petition or schedule."

Judge Brawley refused to allow an amendment to the petition in the cause of *Wilder v. Watts* (15 Am. B. R., 57-68; 138 Fed., 426), and the syllabus in that case states the rule as follows:

"When a proposed amendment to an involuntary bankruptcy petition seeks to plead alleged acts of bankruptcy occurring subsequently to those stated in the original petition, which must have been known to some of the original petitioners at the time such original petition was filed, and the alleged amendment is not served on the bankrupt, and no excuse is offered why the acts sought to be so pleaded were omitted from the original petition, leave to file such amendment will be denied."

Judge Toulmin, in the cause *In re Pure Milk Company of Mobile* (154 Fed., 682), holds that, "An application to amend a bankruptcy petition was not set out in the original petition in compliance with bankruptcy rule 11."

But it is suggested that the proposed amendment is not for the mere purpose of correcting errors and insufficiencies, but is for the other and greater purpose of alleging new and additional matter and of bringing the cause within the influence of Rule VI of the General Orders in Bankruptcy.

One answer to this contention is that the authorities above quoted were decided upon proposed amendments dealing with new matter. In the *Pure Milk Company* case, *supra*, the amendment seeking to introduce entirely new acts of bankruptcy was denied. This was likewise done in *Wilder v. Watts*, *supra*. However, there was no attempt in these cases to invoke the general order stated above.

General Order VI provides, so far as it is applicable to this case, that "In case two or more petitions shall be filed against the same individual in different districts, the first hearing shall be had in the district in which the debtor has his domicile, and the petition may be amended by inserting an allegation of an act of bankruptcy committed at an earlier date than that first alleged, if such earlier act is charged in either of the other petitions." The petitioners contend that they come under this rule, and, necessarily, that in coming under it, they may ignore Rule XI, in so far as it provides for application to amend, as they seem to have done in this cause.

This rule becomes effective when two or more petitions shall be filed against the same person in different districts, and it is here suggested that the rule does not apply when the petitions, as in these clauses, set out in paragraph 4 of the proposed amendment, are filed in the same district, but in different divisions of the district.

General Order VI is founded on section 32 of the act of Congress relating to bankruptcy, and we may look to that section in order to ascertain what is meant by the word "district." Section 32 reads: "In the event petitions are filed against the same person, * * * in different courts of bankruptcy, each of which has jurisdiction, the cases shall be transferred by order of the courts relinquishing jurisdiction, to, and be consolidated by, the one of such courts which can proceed with the same for the greatest convenience of parties in interest." It thus appears that the foundation of this general order uses the phrase "in different courts of bankruptcy" instead of the phrase "in different districts;" and as the district court sitting in either the eastern division or the southern division of the northern district of Alabama is a court of bankruptcy as defined in the statute, it seems that in so far as the case at bar is concerned the rule might be considered as reading in different districts or divisions of the district.

What has been said above does not apply to the matters set forth in paragraph 2 of the proposed amendment as to the cause filed in the district court of the United States for the eastern district of Tennessee. In that case, as we understand it, the act of bankruptcy charged is not "at an earlier date," as required by the rule, but on the same date. The rule is thus stated in *re Sears* (117 Fed. Rep., 294), "General Order in Bankruptcy No. VI by implication limits the power to allow amendments to a petition in involuntary bankruptcy to the simple case in which an earlier act of bankruptcy than the one charged is sought to be incorporated."

It is contended, however, by the creditors moving to strike, that General Order VI does not apply to this cause, but that General Order VII does apply and control it.

General Order VII provides that "Whenever two or more petitions shall be filed by creditors against a common debtor, alleging separate acts of bankruptcy committed by said debtor on different days within four months prior to the filing of said petition, and the debtor shall appear and show cause against an adjudication of bankruptcy against him on the petitions, that petition shall be first heard and tried which alleges the commission of the earliest act of bankruptcy: * * *"

In so far as the present record in this cause is concerned the answer of the alleged bankrupt filed December 4, 1907, is controlling and may be offered against it as evidence even in a different proceeding.

This answer does not show cause against an adjudication, but rather for an adjudication under paragraph 1 of the proposed amendment. It is true that it also denies

the acts of bankruptcy charged in paragraph 4, but as there can be but one adjudication, and that would be sufficient for the effectiveness of the bankruptcy act, it does not seem that this denial can mitigate the force of the former admission.

This matter was before the judge of this district in the cause *In re Harris* (155 Fed. Rep., 216). In that case Judge Hundley says (p. 219), in reference to that part of the rule setting forth "the debtor shall appear and show cause against an adjudication in bankruptcy against him on the petitions:

"It will be noted that the plural is used, and reference is made to petitions and not to a petition or to anyone of these two or more petitions, there being two petitions only in this case to bring in action this rule. It was necessary for the debtor to answer both of these petitions. Had there been three petitions it would have been equally necessary for the debtor to have answered all three of the petitions. In fine, if the debtor does not appear and show cause on all of the petitions, the cause proceeds as it would in the ordinary course of legal procedure without regard to the rule."

It does not, therefore, seem that this cause falls within this provision of Rule VII, but rather that it may fall under Rule VI, if properly presented under that rule.

The matter of the amendment of petitions is held to be within the discretion of the trial court, a discretion which is to be exercised for the advancement of justice. The courts have declined to restrict the exercise of this discretion. *Pittsburg Laundry Supply Company v. Imperial Laundry Company* (154 Fed. Rep., 662). The authorities are numerous for its exercise and against its exercise, in accordance with the different facts presented, and not as an unbending rule, unless made so by the statute. It is understood that the court has certain general powers of amendment as set forth in the cause of *Gleason v. Smith* (145 Fed. Rep., 895, 897), and kindred causes, and also under the Rules of Equity, but such powers are not invoked here—the court is asked to allow the proposed amendment under the statute.

We find no authority to sustain the contention of petitioners that the proposed amendment setting up new and additional matter does not come under the provisions of Rule XI as to amendments. In the case *In re Sears*, *supra*, and generally in all the cases, we find references to the "application to amend," and to the showings on such applications, and I am of opinion that Rule XI should have been followed in this cause, and that the motion to strike out the proposed amendment ought to be granted, but without prejudice to renew the same as petitioners may be advised, and such recommendation is accordingly made to your honor.

Respectfully submitted.

STERLING A. WOOD,
Special Master.

FIRST AMENDMENT TO ORIGINAL PETITION.

In the district court of the United States for the southern division of the northern district of Alabama. In the matter of Southern Steel Company, bankrupt. In bankruptcy.

Come the Birmingham Coal and Iron Company, Sayre Mining and Manufacturing Company, and Star Cahaba Coal Company and amend their petition, by leave of court, for the adjudication of said corporation as a bankrupt as follows:

After the words "said claim being in the amount of over thirteen hundred dollars" insert the following: "Your petitions represent that the Southern Steel Company is insolvent and that within the four months next preceding the date and filing of this petition the said Southern Steel Company while so insolvent transferred portions of its property to Block Pollak Iron Company, who was at the time one of its creditors, amounting to approximately five thousand dollars, with the intent to prefer such creditors over its other creditors."

Your petitioners further represent that the Southern Steel Company, while so insolvent, committed an act of bankruptcy in that it did on, to wit, the 15th day of October, 1907, and subsequent thereto, on various and sundry dates, transfer portions of its property amounting to the sum of fifteen hundred dollars to Shook & Fletcher, who was at that time one of its creditors with the intent to prefer such creditor over its other creditors.

That the Southern Steel Company within four months next preceding the date of the filing of this petition committed an act of bankruptcy in that it did heretofore on, to wit, the 24th day of July, 1907, and on various and sundry dates subsequent thereto, while so insolvent, transfer portions of its property to the Decatur Car Wheel Works, who was at that time one of its creditors, which property so transferred amounted approximately to three thousand dollars, with the intent to prefer such creditor over its other creditors.

Petitioners further allege that within four months preceding the date of the filing of this petition the said Southern Steel Company committed an act of bankruptcy in

that it did heretofore, on, to wit, the 26th day of July, 1907, and at subsequent dates, and times subsequent thereto, while so insolvent, transfer to Moore & Handley Hardware Company, who was at that time one of its creditors, portions of its property amounting to approximately five thousand dollars, with the intent to prefer such creditor over its other creditors.

And your petitioners further allege that the Southern Steel Company within four months next preceding the date of filing of this petition, on, to wit, the 18th day of October, 1907, committed an act of bankruptcy in this: That it did heretofore, on, to wit, said date, transfer, while so insolvent, a portion of its property amounting to fifteen hundred dollars to the Birmingham Boiler Works, who was at that time one of its creditors, with the intent to prefer such creditor over its other creditors.

And your petitioners further allege that the Southern Steel Company, within four months next preceding the filing of this petition, committed an act of bankruptcy in that it did heretofore, on the 28th day of July, 1907, transfer, while so insolvent, a portion of its property to the Prowell Hardware Company, which property so transferred amounted to approximately five thousand dollars, with intent to prefer such creditor over its other creditors.

And your petitioners further allege that the Southern Steel Company, within four months next preceding the filing of this petition, committed an act of bankruptcy in that it did heretofore, on, to wit, the 1st day of August, 1907, transfer, while so insolvent, a portion of its property amounting approximately to \$5,000 to Wimberly and Thomas Hardware Company, who was at that time one of its creditors, with the intent to prefer such creditor over its other creditors.

BIRMINGHAM COAL AND IRON COMPANY,
By PERCY & BENNERS,
Its Attorneys.

SAYRE MINING AND MANUFACTURING COMPANY,
By PERCY & BENNERS,
Its Attorneys.

STAR CAHABA COAL COMPANY,
By PERCY & BENNERS,
Its Attorneys.

STATE OF ALABAMA,
Jefferson County.

Augustus Benners, being duly sworn, deposes and says that the averments of the foregoing amendment are true to the best of his knowledge and belief.

AUGUSTUS BENNERS.

Subscribed and sworn to before me this 6th day of November, 1907.

J. S. DILLON,
Notary Public.

Upon motion of the attorneys for petitioner, leave is granted them to amend their petition as above set forth, this the — day of November, 1907.

A true copy:

STERLING A. WOOD,
Referee.

FEB. 7, 1907.

Amendment to petition in involuntary bankruptcy in the district court of the United States for the southern division of the northern district of Alabama.

In the matter of Southern Steel Company, bankrupt. In bankruptcy.

Come the Birmingham Coal and Iron Company, Sayre Mining and Manufacturing Company, and Star Cahaba Coal Company and, by leave of court first had and obtained, amend their petition to have the Southern Steel Company adjudged an involuntary bankrupt so as to read as follows:

Petitioners, Birmingham Coal and Iron Company, Sayre Mining and Manufacturing Company, and Star Cahaba Coal Company, respectfully show:

1. That the Southern Steel Company is a corporation duly incorporated under the laws of the State of Alabama and was so incorporated more than six months prior to the filing of the original petition of these petitioners in this matter; and that for more than six months prior to the filing of such original petition it had its domicile in the city of

Gadsden, in the county of Etowah, State of Alabama, which county is in the eastern division of said northern district of Alabama; and that said city of Gadsden is designated as the principal place of business of said corporation in its articles or certificate of incorporation; that for more than six months prior to the filing of said original petition the principal office of the Southern Steel Company was maintained in the city of Birmingham in the county of Jefferson in the State of Alabama, said county of Jefferson being in the southern division of the northern district of Alabama; that the properties owned and operated by the Southern Steel Company lay in the State of Alabama, in the State of Tennessee, and in the State of Georgia, and consist, generally speaking, of coal and iron ore mines, blast furnaces for the manufacture of iron, a steel mill, a wire and rod mill, and quarries, that the operations of all of said properties were directed from and controlled by officers or agents of said Southern Steel Company at said principal office of said company in said city of Birmingham; that said Southern Steel Company during said six months prior to the filing of said petition to have it adjudged an involuntary bankrupt was engaged principally in mining and manufacturing pursuits; that said Southern Steel Company owes debts greatly in excess of the amount of one thousand dollars; that your petitioners are each creditors of said Southern Steel Company and have claims against it which amount in the aggregate to greatly more than five hundred dollars; that their said claims are unsecured and that neither of your petitioners is entitled to priority of payment of their said claims within the meaning of section 64b of the bankruptcy law of 1898 as amended, and neither of said petitioners has received any manner of preference whatsoever within the meaning of any portion of said law; that the nature and amount of your petitioners' claims are as follows:

That of the Birmingham Coal and Iron Company is for coal and ore sold to said Southern Steel Company, said claim being in the amount of \$2,319.31; that of Sayre Mining and Manufacturing Company is for coal and coke sold to said Southern Steel Company, said claim being in the amount of over \$5,000.00; that of the Star Cahaba Coal Company is for coal sold to said Southern Steel Company, said claim being in the amount of over \$1,300.00; that within four months preceding the filing of this petition, namely, on, to wit, October 22, 1907, said Southern Steel Company committed an act of bankruptcy in that it did admit in writing its inability to pay its debts and its willingness to be adjudged a bankrupt on that ground; that said corporation did, in a letter to the Sayre Mining and Manufacturing Company, written on, to wit, October 24, 1907, state among other things that said corporation was unable to pay its debts and was willing to be adjudged a bankrupt on that ground.

2. Your petitioners further show that on, to wit, October 25, 1907, there was filed in the district court of the United States for the eastern district of Tennessee, the petition of Nixon Mining Drill Company, Dan C. Wheeler & Company, Knox Bros. & Thomas and King-Baxter Lumber Company to have said Southern Steel Company adjudged an involuntary bankrupt, together with the petition of the same parties to have a receiver appointed for the property and estate of said Southern Steel Company within the jurisdiction of said district court for the eastern district of Tennessee; that said petition to have said receiver appointed alleged among other things that said Southern Steel Company was insolvent and had admitted in writing its inability to pay its debts and its willingness to be adjudged a bankrupt on that ground; that pursuant to said petition G. W. Nixon was appointed receiver of the property of the Southern Steel Company within the eastern district of Tennessee and duly qualified as such and entered upon the discharge of his duties as such and took possession of all the property of the Southern Steel Company within said eastern district of Tennessee.

3. That on, to wit, October 26, 1907, the Trust Company of Georgia filed its petition in the superior court of Dade County, Georgia, alleging among other things that the Southern Steel Company was insolvent and praying the appointment of receivers by said court for all the property of the Southern Steel Company within the State of Georgia; and that pursuant to said petition George F. Hurt was appointed receiver of all the property of the Southern Steel Company within the State of Georgia; and that thereupon said Hurt took possession of said property and now holds the same; and your petitioners aver that said receivers were respectively appointed by the said district court of the United States for the eastern district of Tennessee and said superior court of Dade County, Georgia, because of the insolvency of said Southern Steel Company. Your petitioners further aver that their petition for the adjudication of said Southern Steel Company to be adjudged a bankrupt was filed in the district court of the United States for the eastern division of the northern district of Alabama and the district court of the United States for the southern division of the northern district of Alabama.

4. Your petitioners further aver that on, to wit, October 25, 1907, there was filed in said district court of the United States for both the eastern and southern divisions of the northern district of Alabama, the petition of Crane Company, Roberts-Johnson & Rand Shoe Company, M. R. McNeill and M. B. Du Bose, doing business under the firm name and style of Du Bose Brothers Iron Company, to have said Southern Steel Company adjudged an involuntary bankrupt, which petitions each alleged that the Southern Steel Company had committed the following acts of bankruptcy, to wit:

"Your petitioners represent that the Southern Steel Company is insolvent and that within the four months next preceding the date of the filing of this petition the said Southern Steel Company while so insolvent transferred portions of its property to Block Pollak Iron Company, who was at that time one of its creditors, amounting to approximately five thousand dollars, with the intent to prefer such creditor over its other creditors.

"Your petitioners further represent that the Southern Steel Company while so insolvent committed an act of bankruptcy in that it did, on, to wit, the 15th day of October, 1907, and subsequent thereto on various and sundry dates, transfer portions of its property amounting to the sum of fifteen hundred dollars, to Shook & Fletcher, who was at that time one of its creditors, with the intent to prefer such creditor over its other creditors.

"That the Southern Steel Company within four months next preceding the date of the filing of this petition committed an act of bankruptcy in that it did heretofore, on, to wit, the 24th day of July, 1907, and on various and sundry dates subsequent thereto, while so insolvent, transfer portions of its property to the Decatur Car Wheel Works, who was at that time one of its creditors, which property so transferred amounted to approximately three thousand dollars, with the intent to prefer such creditor over its other creditors.

"Petitioners further allege that within four months next preceding the date of the filing of this petition, the said Southern Steel Company committed an act of bankruptcy in that it did heretofore, on, to wit, the 26th day of July, 1907, and at subsequent dates and times subsequent thereto while so insolvent, transfer to Moore & Handley Hardware Company, who was at that time one of its creditors, portions of its property, amounting to approximately five thousand dollars, with the intent to prefer such creditor over its other creditors.

"And your petitioners further allege that the Southern Steel Company, within four months next preceding the date of the filing of this petition on, to wit, the 18th day of October, 1907, committed an act of bankruptcy in this: that it did, heretofore, on, to wit, said date, transfer, while so insolvent, a portion of its property, amounting to fifteen hundred dollars, to the Birmingham Boiler Works, who was at that time one of its creditors, with the intent to prefer such creditor over its other creditors.

"And your petitioners further allege that the Southern Steel Company within four months next preceding the date of the filing of this petition committed an act of bankruptcy in that it did heretofore, on the 28th day of July, 1907, transfer, while so insolvent, a portion of its property to the Prowell Hardware Company, which property so transferred amounted to approximately five thousand dollars, with intent to prefer such creditor over its other creditors.

"And your petitioners further allege that the Southern Steel Company within four months next preceding the date of the filing of this petition committed an act of bankruptcy in that it did heretofore, on, to-wit, the 1st day of August, 1907, transfer, while so insolvent, a portion of its property, amounting to approximately five thousand dollars, to Wimberly & Thomas Hardware Company, who was at that time one of the creditors, with the intent to prefer such creditor over its other creditors."

Wherefore your petitioners aver and charge that said Southern Steel Company committed said several acts of bankruptcy in said petitions of Crane Company and others above referred to, set forth:

5. Your petitioners further show that simultaneously with the filing of their said petitions to have the Southern Steel Company adjudged an involuntary bankrupt, they filed in each of said courts for the northern district of Alabama their petitions for the appointment of receivers of all the property of the Southern Steel Company on the ground that such action was absolutely necessary for the preservation of the estate and property of said Southern Steel Company, pursuant to which receivers were appointed and are now in possession of the property of the Southern Steel Company, except the portions thereof which are in the possession of said G. W. Nixon, receiver, and said George F. Hurt, receiver.

6. Your petitioners show that on account of the fact that its property is in the possession of separate receivers appointed by three different courts, namely, this honorable court, said superior court of Dade County, Ga., and the district court of the United States for the eastern district of Tennessee, it is absolutely necessary that said corpora-

tion be adjudged a bankrupt and that its creditors proceed to elect a trustee or trustees under the national bankruptcy act, in order that its property may be collected and operated under and by one common control and that the estate of said Southern Steel Company may be properly administered for the benefit of its unsecured creditors and other persons interested in the same

Wherefore your petitioners pray that said Southern Steel Company may be adjudged an involuntary bankrupt within the purview of the act of Congress relating to bankruptcy.

BIRMINGHAM COAL AND IRON COMPANY,
By JAMES BONNYMAN,
Its Treasurer and General Manager.

SAYRE MINING AND MANUFACTURING COMPANY,
By JOHN H. ADAMS,
Its Vice-President and Treasurer.

STAR CAHABA COAL COMPANY,
By W. B. ROBINSON,
Its President.

PERCY & BENNERS,
Attorneys for Petitioners.

STATE OF ALABAMA,
Jefferson County:

James Bonnyman, John H. Adams, and W. G. Robinson, being duly sworn, say they are the respective officers of petitioners designated after their names above and that they are authorized respectively for said petitioners to sign the same and make this affidavit, and that the averments of the foregoing petition are true as therein stated.

JAMES BONNYMAN.
JOHN H. ADAMS.
W. G. ROBINSON.

Subscribed and sworn to before me this the 15th day of November, 1907.

J. S. DILLON,
Notary Public.

Notice of the filing of this amendment is accepted this November 29th, 1907.

O. R. HOOD,
Attorney for Southern Steel Company.

A true copy:

STERLING A. WOOD, *Referee.*

2/7/08.

Report on motion to hear causes in the district court of the United States for the northern district of Alabama.

No. 7980. In re Du Bose Brothers Iron Company et al., petitioners, v. Southern Steel Company, respondent, in bankruptcy, southern division. No. 240. Du Bose Brothers Iron Company et al., petitioners, v. Southern Steel Company, respondent, in bankruptcy, eastern division. In the matter of the petition of Du Bose Brothers Iron Company et al., praying that the above causes be advanced. Report of special master to the honorable Oscar R. Hundley, judge of said court.

Present: Sterling A. Wood, special master; L. J. Marx, attorney for creditors, Du Bose Brothers Iron Company; A. Lee Oberdofer, attorney for creditors, Du Bose Brothers Iron Company; Powell & Blackburn, attorneys for creditors, Du Bose Brothers Iron Company; Ward & Rudolph, attorneys for creditors, Du Bose Brothers Iron Company; Tomlinson & McCullough, attorneys for De Vorkin et al., creditors; Percy & Benners, attorneys for Birmingham Coal and Iron Company et al., creditors.

The above matters came on to be heard upon the motion filed in this cause December 9, 1907, by Du Bose Brothers Iron Company, praying that the hearing upon the petition hereto filed in this cause, and being No. 7977 in the southern division and 239 in the eastern division, and being entitled the Birmingham Coal and Iron Company et al., petitioners, v. The Southern Steel Company, respondent, be stayed, and that the petitions Nos. 7980 and 240 in the same divisions, respectively, of said Du Bose Brothers Iron Company et al., petitioners, against the same respondent, be first heard, as set forth in the said petition.

The Birmingham Coal and Iron Company et al. joined issue upon paragraphs 1 and 2 of the petitions, and demurred to or moved to strike the remaining paragraphs of the said petition, from 3 to 9, inclusive,

The demurrer to paragraph 3 of the said petition was sustained, for the reason that the time of the service of the said original petitions, Nos. 7797 and 239, was not a duty imposed upon the petitioners, and if there was any neglect of prompt service that they were not chargeable with the same so far as appeared.

The demurrer was sustained to paragraph 4 of the said petition, for the reason that the payment of the costs to the clerk of the court was not a jurisdictional matter.

It is contended under the case *In re Barden* (101 Fed. Rep., 553, s. c. 4 Am. B. R., 31) that the cost should have been paid before the filing of this petition, under section 52 of the bankruptcy act, and that the nonpayment deprived the court of jurisdiction over the cause. The case quoted does not sustain the contention, as it orders that the cause be stayed until the costs are paid. We find no authority going to the extent the motion seeks in this cause.

The motion to strike paragraph 5 of the petition was sustained, because the same was prematurely filed, inasmuch as the condition of the record in the cause is such that the special master is unable to determine what is or is not the frame of the said petitions Nos. 7977 and 239. That condition is that a hearing has been had in the said cause upon motions to strike a proposed amendment to the petitions in the said causes, and the special master has made a report upon the same, to which report exceptions have been filed by the creditors filing the petitions now pending and being heard, and said exceptions to said report have not been acted upon by the judge of this district. The entire matter of the framework of the first petition is consequently before the district court, and paragraph 5 is prematurely filed at this time, and before what is or what is not in said petitions have been determined.

Motion to strike paragraphs 6, 7, 8, and 9 is made. These paragraphs are of kindred nature and allege that the filing of the first petitions, Nos. 7977 and 239, as friendly or not hostile or fraudulent on the part of the alleged bankrupt. Motion is made to strike these grounds of the petition. The motion is sustained for the reason that the acts of the bankrupt and concerting creditors in placing his property within the jurisdiction of the courts, even if fraudulent or the result of fraudulent connivance between the bankrupt and certain of his creditors, can not be made the reason or a predicate upon which subsequent petitioning creditors can found any right, in so far as the petition in question is concerned, to have priority given their petition. If there be fraudulent collusion between the bankrupt and certain of his creditors, and as a result of this collusion the property is surrendered to the court, immediately upon the court seizing the property the taint of fraud is removed and the property stands for administration just as if there had been no fraudulent collusion, or as if creditors who never saw or heard the bankrupt as to personal relations had filed a petition for the purpose of invoking the provisions of the act of Congress relating to bankruptcy. We take it that no matter in what condition of fraud the estate reached the court, the administration of the court will be in accordance with the act of Congress mentioned and that the fraud does not permeate the question further, at least in so far as to found or predicate a motion for the holding in abeyance of the first petition.

It therefore results that the petition upon which this hearing is had is not well filed in matter of law in so far as these grounds are concerned.

As to paragraphs 1 and 2 of the said petition, evidence was taken, a copy of which is attached to this report for information of the court. These paragraphs allege that the petitions in the causes Nos. 7977 and No. 239 were not legally filed in the office of the clerk of the court on the day upon which they purport to be filed—that is, on October 24, 1907—but were filed in that court on October 26, 1907.

The object of this motion is immediately seen, as the petitions in causes Nos. 7980 and 240 were filed in the office of the clerk on October 25, 1907.

The evidence of the officers of the court shows that, while these petitions were marked "filed" in the office of the attorneys for the petitioning creditors, and that one of such petitions was immediately surrendered to said attorneys for the purpose of presenting it, with other papers in the cause, to the district judge, yet that the other of said petitions was immediately brought and deposited in the office of the clerk of the court and docketed. It does not, therefore, seem that the question of fact has been sustained by the evidence, but that the fact is that the said petitions were properly and legally filed upon the date and at the time they purport to have been filed.

In view of the above, it is respectfully recommended to the court that the prayer of the said petition of Du Bose Brothers Iron Company be denied.

Witness my official signature this December 23rd, 1907.

STERLING A. WOOD, *Special Master.*

Examination by Mr. Z. B. Rudolph, representing Du Bose Brothers Iron Company.

Maj. CHARLES J. ALLISON, on being first duly sworn, on oath testifies as follows:

Q. When were the costs on the case of the Birmingham Coal and Iron Company against the Southern Steel Company paid?—A. October 30.

Q. When did you get the papers in your possession; that is, the petition of the Birmingham Coal and Iron Company?—A. I don't know. I was not in town the day they were filed. Mr. Johnson filed that.

Q. Was it filed in the office?—A. I do not know; I was not in town.

Q. When did you get possession of that paper?

(This question is objected to as not being material, etc., and the objection is sustained by the special master.)

Q. When did you first see it in your office?

(This question is objected to by Mr. Benners, representing the petitioning creditors, when the witness says:)

A. I can not answer that.

Q. Don't you remember, on the morning of the 26th day of October, that it was not in your office when I was there looking for it?—

A. I do not know, Mr. Rudolph, whether it was there or not. I approved two bonds the 26th.

Q. When does court docket show the costs in the petition of Du Bose Brothers against the Southern Steel Company were filed?—A. The 25th day of October.

Q. When were the costs in the case of the Birmingham Coal and Iron Company for the Anniston division paid?—A. I have not that here.

Q. Don't you know that was paid the same time as the other?—A. I suppose it was.

When were the subpoenas in No. 7977 issued?

(Mr. Benners, representing the petitioning creditors, objects to the question, in that it is shown by the papers themselves, and the objection is sustained by the court.)

Q. Don't you know, as a matter of fact, the subpoenas in the Roberts-Johnson-Rand Company were issued and served before the subpoenas in the case of the Birmingham Coal and Iron Company?

(The special master rules on objection that the subpoenas themselves are the best evidence.)

Examination continued by Mr. Benners, representing the petitioning creditors:

Q. In the matter of paying costs, you don't always insist on the payment the day and minute due?—A. No, sir; I don't.

By Mr. RUDOLPH:

Q. You don't issue the subpoenas until paid?—A. That depends upon who wants them.

On examination by Mr. Rudolph, Mr. C. R. Johnson, on being first duly sworn, on oath testifies as follows:

Q. Mr. Johnson, did you file this petition 7977, the Birmingham Coal and Iron Company v. The Southern Steel Company?—A. Yes, sir.

Q. Where were you?—A. I was in Messrs. Percy & Benners's office.

Q. In Percy & Benners's office?—A. Yes, sir.

Q. What became of the petition; did they take it away?—A. I brought the copy back to the office.

Q. They took the others with them?—A. Yes, sir.

Q. Did they take one to Huntsville?—A. I don't know about that.

Mr. BENNERS. One of the copies was taken to the judge to show the petition had been filed.

Q. You issued the subpoenas in this case?—A. I don't remember. I was not feeling well, and left the office.

Q. Is that your writing [showing witness original subpoena]?—

A. No; I did not issue it. Miss Mahoney did.

Q. Did they pay you the costs in that case at that time?—A. No, sir.

Q. You didn't ask them for it, and they didn't pay it?—A. No, sir.

On further examination by Mr. Sterling A. Wood, special master, witness testifies as follows:

Q. At the time the petitions were presented to you, how many were there, one, two, or three?—A. I think just two petitions and some other papers—papers asking for receivers, etc.

Q. You marked them both filed and delivered one to counsel on the other side?—A. Yes, sir; I took one copy and entered on the docket.

Q. What did you do with the other copy?—A. Brought it back to the office.

Q. Brought back by you?—A. Yes, sir.

Q. That shows "filed in office, at 12.10, October 24, 1907; how long after that did you bring the other in the office?—A. I came back immediately.

Q. What did you do with the copy after you got to the office?—A. I went out to dinner, and I suppose Miss Mahoney made out those subpoenas.

Q. Who is Miss Mahoney?—A. Our deputy clerk.

The several petitions and indorsements therein, and subpoenas and indorsements therein, as appears in the files, were offered in evidence.

PETITION OF DU BOSE BROTHERS IRON COMPANY ET AL. TO HAVE FIRST HEARING.

In the district court of the United States for the southern division of the northern district of Alabama. In the matter of Southern Steel Company, bankrupt. In bankruptcy.

To the honorable O. R. HUNDLEY,
Judge, etc.:

Comes your petitioner, the Du Bose Brothers Iron Company, one of the creditors who filed petition against the said alleged bankrupt, and would move the court to order a hearing upon the said petition filed by the said Du Bose Brothers Iron Company, M. R. McNeil, Roberts-Johnson & Rand Shoe Company, et al., against the Southern Steel Company, on, to wit, the 25th day of October, 1907, before a hearing is had upon the petition against the said Southern Steel Company filed by the Birmingham Coal and Iron Company, Sayre Mining and Manufacturing Company, et al. upon the following grounds:

1. The said petition of the Birmingham Coal and Iron Company, Sayre Mining and Manufacturing Company, et al. against the said Southern Steel Company was not properly and legally filed in the office of the clerk of the United States court for the southern division of the northern district of Alabama on, to wit, the 24th day of October, 1907.

2. The said alleged petition of the Birmingham Coal and Iron Company, Sayre Mining and Manufacturing Company, et al. against the Southern Steel Company was not legally filed in the office of the clerk of the United States court for the southern division of the northern district of Alabama at Birmingham until on, to wit, the 26th day of October, 1907.

3. The said alleged petition of the Birmingham Coal and Iron Company, Sayre Mining and Manufacturing Company, et al. against the said Southern Steel Company was not served upon the bankrupt, or its officers, until after the summons issued upon the petition filed by your petitioner had been duly and legally served upon the said Southern Steel Company.

4. The alleged petition of the said Birmingham Coal and Iron Company, Sayre Mining and Manufacturing Company, et al. against the Southern Steel Company was improperly marked filed by the clerk of the United States Court for the southern division of the northern district, in that section 51 (2) of the bankrupt act requires the clerk to collect the fees of the clerk, referee, and trustee in each case instituted before filing the petition, and the fees in said petition filed by the Birmingham Coal and Iron Company et al. were not paid, nor the subpoenas on said petitioners issued until the 26th day of October, 1907, after the subpoenas on the petition of your said petitioner against the Southern Steel Company had been duly and legally executed by the marshal of this district upon the payment of the costs thereon.

5. The petition of your petitioner and his associates alleged prior acts of bankruptcy to that charged in the petition of the Birmingham Coal and Iron Company et al. against the Southern Steel Company, and the said bankrupt having denied the alleged acts of bankruptcy in each petition, the petition of your petitioner and his associates should be first heard and determined in this court.

6. The said petition of the Birmingham Coal and Iron Company et al. against the Southern Steel Company is an attempted evasion of the bankrupt law, and is a friendly proceeding in and to the interests of the bankrupt, and should not be entertained and considered by a court of law and justice.

7. The said alleged petition of the Birmingham Coal and Iron Company et al. against the Southern Steel Company is in fact a proceeding at the instance and with the consent, agreement, and connivance of the said bankrupt, and in evasion of the bankrupt law, and is not a hostile proceeding as contemplated by the law in such proceedings.

8. The said alleged petition of the Birmingham Coal and Iron Company et al. against the Southern Steel Company was instituted fraudulently at the instance of the bankrupt upon an alleged act or acts committed in pursuance of an intention to evade the bankrupt act and to place the property of the said bankrupt in the possession and under the control of parties friendly to the said bankrupt and hostile to the interests of the general creditors of said bankrupt.

9. Said alleged proceedings in bankruptcy by the said Birmingham Coal and Iron Company et al. against the Southern Steel Company were conceived and are being prosecuted as a fraudulent evasion of the bankrupt law, and in the interest of the said bankrupt, and for the purpose of placing the property of the said bankrupt in the possession and under the control of friends of said bankrupt and not for the interest of all creditors of the said bankrupt.

Premises considered, your petitioner prays that your Honor refer the hearing of this matter to a special master, or appoint a day for the hearing of same by your Honor, and upon the hearing of same, and proof of the facts hereinbefore alleged your Honor will direct that hearing upon the petition filed by the said Birmingham Coal and Iron Company et al. be stayed, and the filing thereof be corrected and properly entered as of the date upon which the clerk of said court was legally authorized to mark the same filed, and will direct a hearing of said petition of your petitioner herein, and his associates, upon their petition against the Southern Steel Company, before the hearing upon said petition of the Birmingham Coal and Iron Company et al. against the Southern Steel Company, and for such other and further orders as to your honor may seem meet and proper.

(Signed)

LEO J. MARX,
A. LEO OBERDORFER,
Z. G. RUDOLPH,

Attorneys for Du Bose Bros. Iron Co. et al., petitioning creditors.

The above petition is referred to Sterling A. Wood, special master, for investigation and report upon all questions of law and fact.

OSCAR R. HUNDLEY, *Judge.*

DECEMBER 9, 1907.

DECREE ORDERING TAKING OF TESTIMONY.

In the district court of the United States for the northern district of Alabama. No. 7977. In re Birmingham Coal and Iron Company et al., petitioners, v. Southern Steel Company, respondent. In bankruptcy, southern division. No. 239. In re Birmingham Coal and Iron Company et al., petitioners, v. Southern Steel Company, respondent. In bankruptcy, eastern division. No. 7980. In re Du Bose Brothers Iron Company et al., petitioners, v. Southern Steel Company, respondent. In bankruptcy, southern division. No. 240. In re Du Bose Brothers Iron Company et al., petitioners, v. Southern Steel Company, respondent. In bankruptcy, eastern division.

The above matters coming on to be heard before me on this January 4, 1908, in accordance with the notice heretofore given in these causes, upon the exceptions heretofore filed herein to the report of the special master on the motion to strike the proposed amendments in the causes No. 7977 and 239, as above set forth; and upon the exceptions heretofore filed in this cause to the report of the special master on the motions to first hear causes No. 7980 and 240, as above set forth, and upon the other pleadings in the said causes; and thereupon come the parties to said causes and their attorneys of record and the matters and things therein set down are argued and submitted to the court.

And the court having duly considered the said matters, it is ordered that the special master in this cause do proceed with all convenient speed to take testimony upon the averments of the said petitions, the proposed amendments thereto, and the said motions therein as shown by the files in this cause, and he will report the said testimony, with his conclusions and recommendations thereupon as to the law and as to the facts to this court. It is further ordered that all questions as to the allowance of the proposed amendments, and all questions as to the pleadings in said cause, and all questions as to the action of this court upon the said reports be reserved for the further determination of this court, except that it is ordered, adjudged, and decreed that the motion to strike paragraphs 2 and 3 of the said proposed amendments to causes Nos. 7977 and 239 be and the same are hereby sustained. The said special master will give notice of the time and place of said hearing before him to all parties of record or their attorneys.

And it appearing to the court that the bankrupt has demanded a jury upon the petition and causes above named, Nos. 7980 and 240, it is ordered that the same be and are hereby set for hearing on the 21st day of January, 1908, at 10 o'clock a. m.

Witness my official signature this the 7th day of January, 1908.

OSCAR R. HUNDLEY,
U. S. District Judge.

REPORT OF SPECIAL MASTER AS TO ADJUDICATION.

In the district court of the United States for the northern district of Alabama. No. 7977. In re Birmingham Coal and Iron Company et al., petitioners, v. Southern Steel Company, respondent. In bankruptcy, southern division. No. 239. In re Birmingham Coal and Iron Company et al., petitioners, v. Southern Steel Company, respondent. In bankruptcy, eastern division. No. 7980. In re Du Bose Brothers Iron Company et al., petitioners, v. Southern Steel Company, respondent. In bankruptcy, southern division. No. 240. In re Du Bose Brothers Iron Company et al., petitioners, v. Southern Steel Company, respondent. In bankruptcy, eastern division.

To the honorable OSCAR R. HUNDLEY,
Judge of said Court:

Statement.

In accordance with the decree of your honor of October 25, 1907, and also of January 7, 1908, the undersigned, special master, set the above causes down for hearing before him on January 9, 1908, and notified all attorneys of record in the causes of the same.

The various parties appeared by their attorneys and evidence was taken and argument was heard in the causes, and in accordance with the references the evidence is herewith transmitted to your honor, together with the findings and recommendations upon the same.

The evidence was allowed to take a wide range, against the objections, on the one side, of the width of the range, and against the objections on the opposing side of the alleged limitation of the range. It covers some 600 pages of typewritten matter, and is herewith transmitted to your honor.

The issues clearly within the facts to be shown were:

1. The allegations of the original petitions in Nos. 7977 and 239.
2. The allegations of the second proposed amendment of November 29, 1907; and
3. The allegations of the petition to first hear causes Nos. 7980 and 240 in preference to causes Nos. 7977 and 239; and
4. The remaining pleadings in the causes.

Of course no inquiry can be made as to the facts in the causes 7980 and 240 as the demand of the alleged bankrupt that they be tried by a jury precludes this.

The evidence submitted shows that the failure of the Southern Steel Company dates from October 22, 1907.

That date is an eventful one in the history of this country, for then began the runs upon the great financial institutions in the money center of this country, which continued until the wreck of large fortunes, and the consequent panic, was shown not only there but in many homes by the cutting or absence of rations from the laborer's table. These events called for the disinterested care and work of the highest officials of the nation, the President and the Secretary of the Treasury, and the interested efforts of those financiers whose study had in part foreseen the event, to get what they could out of it, and stop the fire before it reached their own premises. One well-known incident of this upheaval is that the largest coal, iron, and steel company of this district (T. C. I. & R. R. Co.) changed hands during this time, when no man wanted to sell at the prices offered, and few were able to and fewer still dared to buy. It has even this early blown away in part and left this court as one of its results, the alleged bankruptcy of the Southern Steel Company, which is the question now pending and for determination by your honor.

Pleadings.

The pleadings in the causes are somewhat voluminous, and the insistence upon the rights arising from them are carefully guarded and ably presented.

Pleadings of first petitioning creditors.

The original petition was filed October 23, 1907.

The first amendment proposed to the same was filed November 11, 1907, and this was withdrawn in open court.

The second proposed amendment was filed November 29, 1907, and paragraph 2 and 3 stricken therefrom by decree of the judge of this court filed January 7, 1908.

On December 12, 1907, the petitioning creditors prayed for leave to amend, as set forth in their proposed amendment of November 29, 1907.

On January 13, 1908, the Southern Clay Manufacturing Company and others prayed to join in the petitions as originally filed and are represented by the same attorneys.

Pleading of the alleged bankrupt.

The alleged bankrupt answered the original petitions in Nos. 7977 and 239 by its answer filed herein November 2, 1907. This answer was made by its attorney, following in haec verba from No. 6 of the official forms, except that it is not verified. On December 4, 1907, the alleged bankrupt answered the proposed amended petition as filed November 29, 1907, under oath, but without withdrawing its first answer, and among other things admitted the act of bankruptcy set up in the original petition, but denied all others. On December 7, 1907, William L. Delheim & Co., a creditor, moved to strike out the said answer filed December 4, 1907, and on December 13, 1907, the original petitioning creditors moved to strike out the said first answer, and on January 13, 1908, the alleged bankrupt filed its petition, under oath, for leave to withdraw its first answer of November 4, 1907, and admitted the allegations of the original petition and insisted upon its answer of December 4, 1907.

Pleadings of opposing creditors.

The many demurrers filed in the causes were previously overruled, as appears from the report of the special master filed November 18, 1907, to which no exceptions were filed. Answer was made to the original petition, denying its allegations by the following creditors, in addition to the second petitioning creditors, Sam Locasio, B. F. Roden Grocery Co., M. B. Dubose, and Devorkin Brothers. On December 20, 1907, the above creditors and W. L. Delheim & Co. moved to strike out the proposed amendment filed November 29, 1907, and the same creditors on January 16, 1908, filed their objections to the motion of the bankrupt to withdraw its answer filed January 13, 1908.

Amendments.

The subject of amendments has been discussed so fully in the report of the special master, filed December 6, 1907, that further discussion of the same will be pretermitted here. The conclusion there arrived at, that the granting or refusing the same was a matter of judicial discretion, is adhered to.

Petition to join in original petition.

The Southern Clay Manufacturing Company, Miller & Hart, and the Cahaba Southern Coal Mining Company, on January 13, 1908, filed their petition for leave to enter their appearance and to join in the original petition in causes Nos. 7977 and 239 herein. This appearance and joinder is asked under section 59, subdivision of the bankruptcy act, which provides: "(f) Creditors other than original petitioners may at any time enter their appearance and join in the petition, or file an answer and be heard in opposition to the prayer of the petition."

The courts have granted such applications when requested. Judge Toulmin says in a recent cause, "Creditors other than the original petitioners may, at any time, enter their appearance and join in the petition, and creditors so joining in a petition subsequent to its filing may be reckoned in making up the number of creditors and amount of claims required by the act to support the petition."

In re Crenshaw, 156 Fed., 638; In re Romanow, 92 Fed., 210.

Amendments to Nos. 7980 and 240.

The petitioning creditors in causes 7980 and 240, after the evidence and arguments on all of the causes was completed, filed an application to amend their original petition, supported by affidavit, and the proposed amendment, setting up additional alleged acts of bankruptcy. The application shows that these additional alleged acts of bankruptcy only came to their knowledge upon this hearing; they are: (8) That respondent committed an act of bankruptcy by transferring \$3,977.25 to the Alabama City, Gadsden and Attala Railroad Company, in October, 1907, with intent to hinder and delay its creditors; and (9) that respondent committed an act of bankruptcy by transferring \$5,000 to the Sayre Mining and Manufacturing Company, on October 22, 1907, with intent to prefer said company over its remaining creditors, and as therein stated.

The alleged bankrupt demurred to and answered this amendment.

Act of bankruptcy alleged in original petition.

The only act of bankruptcy alleged in the original petition is that provided for in section 3 (5) of the bankruptcy act "3 * * * (5) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground."

In proving this allegation there was offered in evidence a certified copy of a resolution passed by the board of directors, and letters written in pursuance of the same. The resolution was as follows:

"Whereas certain creditors have threatened to institute proceedings in voluntary bankruptcy against the company and thereby secure advantages in the appointment of temporary receiver, and in order to avoid permitting them to secure this advantage, we deem it to the benefit of all interested that the assent of the company be given to the appointment of a temporary receiver or receivers in bankruptcy, if it becomes necessary.

"Now, therefore, be it

"Resolved, That O. R. Hood, attorney for the company, be, and he hereby is, authorized and empowered to represent the company generally in any suit or suits or bankruptcy proceedings that are now pending or that may be brought against the company looking to the placing of it in involuntary bankruptcy and to the appointment of temporary receivers, and that he be, and is hereby, given full power and authority to exercise his discretion in agreeing in the name of and on behalf of the company in such a proceeding to the appointment of a temporary receiver or receivers and to authorize and give its assent to all things necessary or expedient in connection therewith."

The letters written in pursuance of the same were as follows:

BIRMINGHAM, ALA., October 24, 1907.

SAYRE MINING AND MANUFACTURING COMPANY,

Birmingham, Ala.

GENTLEMEN: In regard to your claim against the Southern Steel Company, I beg to say that we are in a position where we can not pay it. We regret to make this statement and admission, and under these circumstances we are forced to make the

admission to you, and to all others concerned, that the Southern Steel Company is unable to pay its debts and is willing to be adjudged a bankrupt on that ground.

Very truly, yours,

SOUTHERN STEEL COMPANY,
By O. R. HOOD, *Attorney.*

BIRMINGHAM, ALA., *October 24, 1907.*

SAYRE MINING AND MANUFACTURING COMPANY,
Birmingham, Ala.

GENTLEMEN: I regret very much to state that the Southern Steel Company is unable to pay its debts and is willing to be adjudged a bankrupt on that ground.

Yours, truly,

SOUTHERN STEEL COMPANY,
E. T. SCHULER,
Vice-President.

The evidence as to the meeting of the board of directors and as to what was done at the same was very voluminous, and all was received in order that all of the actual facts might be known. These show substantially that the failure to get the money was made known, it was acknowledged that it could not pay its debts, and it was agreed that bankruptcy was the proper form and that all were willing for it to take that course. The attorney of the company was directed to draw up the necessary resolutions to effectuate this purpose, and one of the directors dictated the "Whereas" clauses as they appear in the minutes. No one connected with the company—officer, director, bondholder, or stockholder—has ever disputed the fact that it was intended to do such an act as would enable some of its creditors to put it in bankruptcy, nor that its action was more in its own interest than for the interest of all of its creditors. The facts as they appear in the record are much stronger than any authority cited to the contrary.

The report of the special master upon the hearing on the demurrers may be looked to for authorities discussing the principles of law involved herein.

ACTS OF BANKRUPTCY AS ALLEGED IN ORIGINAL PETITION AS AMENDED.

In order that the proof may sustain the allegations of the petition as amended, as to the seven acts of bankruptcy therein set up, it is necessary to show that the alleged bankrupt is insolvent and that such payments were made with intent to prefer.

Insolvency.

In order to sustain the allegations of bankruptcy in the proposed amendment to the causes Nos. 7977 and 239 it is necessary to show that the alleged bankrupt was insolvent at the time the petitions were filed, and much of the evidence offered was for or against this contention.

There is more material evidence in this record upon the subject of solvency than the fact that on October 21, 1907, the father of Moses Taylor, the president of the company, had loaned this company \$1,500,000, to be delivered October 22, 1907. On that day the runs began on the banks and trust companies, the streets were blocked with anxious depositors and the money could not be obtained, and was not delivered. This may be looked to, with the other evidence upon this subject, the argument being that if the president of the company would allow his father to put that amount in it the entire personnel of the company must have, at that time, had unlimited faith and confidence in it.

The consideration of the question of insolvency is further aided by the fact that it is looked to from the point of creditor only, and that consequently the stock, amounting to \$10,000,000 of common and \$15,000,000 of preferred, is not taken into account as to debt due creditors, and thus \$25,000,000 of stock liabilities are disposed of. This stock may be an asset, as under the laws of Alabama no stock can be issued "except for money, labor done, or money or property actually received."

This great book liability as to the internal affairs of the company may be changed into a positive asset, in so far as the creditors are concerned, and to such extent as may be necessary to pay them. With this elimination the deficit and loss as shown by the consolidated balance sheet of September 30, 1907, disappear, and the excess of assets over liabilities would amount to \$7,964,543.52.

The question of solvency or insolvency is further aided by evidence tending to show what was the fair market value of these properties outside of and away from the books. These parties were experts in their several lines, and approached the subjects

with care, and differed to some extent, but in the main agreed. The properties were valued separately and together, and it was shown, what is well known, that together they are more valuable than separated, as the possession of all things necessary to convert the raw into the finished product necessarily adds to the value of each acre of material and of each productive machine when under one management.

Examination of bankrupt on issue of insolvency.

Exceptions are reserved to the action of the special master in sustaining objections to questions propounded to the officers of the alleged bankrupt, concerning its "acts, conduct, or property," as provided in section 21 of the bankruptcy act, not within the issues now referred.

The acts of bankruptcy charged in the proposed amended petition are 7 in number, and are under section 3, subdivision 2, of the bankruptcy act. This provision is:

"(2) Transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors."

Subdivision of said section 3 provides:

"(d) Whenever a person against whom a petition has been filed as hereinbefore provided in the second * * * subdivision of this section takes issue with and denies the allegation of his insolvency, it shall be his duty to appear in court on the hearing with the books, papers, and accounts, and submit to an examination and give testimony as to all matters tending to establish solvency or insolvency, and in case of his failure to so attend and submit to examination the burden of proving his solvency shall rest upon himself."

The alleged bankrupt appeared, as shown by the testimony and as hereafter more fully explained, and the special master, having held that it had acquitted itself of the burden of proving its solvency cast upon it by the statute and that this burden of proving insolvency rested upon the creditors asserting it, held, further, that the examination of the alleged bankrupt was limited to the issues referred, and that it was not then subject to the general examination provided for a bankrupt in the statute.

There may be authority for a general examination of the alleged bankrupt prior to adjudication, but it has been produced. Upon this subject it is said by Judge Toulmin in the case *In re Crenshaw* (155 Fed. Rep., 271):

"In the case of an involuntary bankruptcy proceeding, like the one under consideration, a petition is filed, and it may be seen that the bankruptcy proceedings are pending, non constat the alleged bankrupt may never be adjudicated a bankrupt. It appears clear to me that the court should not order an examination 'concerning the acts, conduct, or property of a bankrupt' before the party concerning whose acts, property, etc., it is purposed to examine has been adjudged a bankrupt."

At the commencement of the hearing the bankrupt appeared through one of its vice-presidents, E. T. Schuler; vice-president and general manager, — Jones; its secretary, R. D. Carver; and its treasurer, A. R. Forsyth; its attorney, O. R. Hood; one of its bookkeepers, — Ferguson; and one of its land agents, — Thornton. All of its books and papers in Alabama were in the possession of the receivers, and they were produced by the receivers at the request of the said officers or some of them. Each of these officers submitted to examination, and it was held and reported elsewhere that the bankrupt had acquitted itself of the burden of proving its solvency, and that the burden of proving insolvency was cast upon the petitioning creditors who alleged the same.

The hearing in this matter began January 9, 1908, and proceeded from day to day until the 18th. On January 14, 1908, M. R. McNeil filed his petition setting up that the bankrupt had not produced its minute book, stock-certificate book, and stock ledger, and prayed an order for the production of the same.

The alleged bankrupt answered the said motion on January 15, 1908, setting up sundry defenses in its answer. Upon the hearing it developed that the Alabama minute book, as shown by the evidence, had been produced, and that the other books were in New York.

It being apparent that the books could not be brought to the hearing before its conclusion, the petition was declined in so far as this hearing was concerned. It is clear that the books will be material in case the respondent be adjudged a bankrupt, and its assets are not sufficient to pay its creditors, as legally unpaid stock subscriptions may be a material asset for the benefit of creditors.

Section 1 (15) of the act of Congress relating to bankruptcy provides that:

"(15) A person shall be deemed insolvent within the provisions of this act wherever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, removed, or permitted to be concealed or removed with

intent to defraud, hinder, or delay his creditors shall not, at a fair valuation, be sufficient in amount to pay his debts."

What is a fair valuation of property under the peculiar facts of this case is a hard question to determine, and might vary more than a million dollars within a twelve months in accordance with the market prices of steel or iron.

The syllabus of the case of *Rutland County National Bank v. Graves* (156 Fed. Rep., 168), says:

"In determining the question of a bankrupt's insolvency at the time he made a payment to a creditor, as bearing upon the question of his intent to give a preference, his property should be taken at a fair valuation, and not at the amount it afterwards brought when sold at auction by the trustee in bankruptcy."

Intent to prefer.

It is also necessary to sustain the allegations of bankruptcy in the proposed amendment to the causes Nos. 7977 and 239 that the alleged payment should have been made as therein set out, and that such payments should have been made with intent to prefer such creditors over the remaining creditors or some of them.

The alleged payments with intent to prefer are set forth as 7 distinct acts of bankruptcy and are alleged to have been made to (1) The Block Pollak Iron Company, (2) Shook & Fletcher, (3) Decatur Car Wheel Works, (4) Moore & Handley Hardware Company, (5) Birmingham Boiler Works, (6) Prowell Hardware Company, and (7) Wimberly-Thomas Hardware Company.

The great weight of all the evidence tends to show that the debts alleged did not exist at all; or that payments upon the same were made in the ordinary course of business, although there is some testimony to the contrary.

The case of *Goodlander v. Atwood* (18 Am. B. R., 510) holds that:

"Payments of \$100 and \$121.15 made within the four months periods by a debtor who did not regard himself as insolvent, but was so in fact, in the sense in which the word is used in the bankruptcy act of 1898, to bona fide creditors in the ordinary course of his business, which the evidence shows he expected to continue and meet his obligations as they fell due, will not be held to have been made with intent to prefer within section 3 (2) and are not acts of bankruptcy.

Receivers.

The court has appointed four receivers in this cause, Messrs. T. G. Bush, chairman; Edgar, L. Adler, Joseph O. Thompson, and Elijah G. Chandler. One of the issues in the cause is the motion to first hear causes 7980 and 240 in preference to causes 7977 and 239, the same being raised by the 6, 7, 8, and 9 grounds of said motion, which are as follows:

"6. The said petition of the Birmingham Coal and Iron Company et al. against the Southern Steel Company is an attempted evasion of the bankrupt law, and is a friendly proceeding in and to the interests of the bankrupt, and should not be entertained and considered by a court of law and justice.

"7. The said alleged petition of the Birmingham Coal and Iron Company et al. against the Southern Steel Company is in fact a proceeding at the instance and with the consent, agreement and connivance of the said bankrupt, and in the evasion of the bankrupt law, and is not a hostile proceeding as contemplated by the law in such proceedings.

"8. The said alleged petition of the Birmingham Coal and Iron Company et al. against the Southern Steel Company was instituted fraudulently at the instance of the bankrupt upon an alleged act or acts committed in pursuance of an intention to evade the bankrupt act and to place the property of said bankrupt in the possession and under the control of the parties friendly to the said bankrupt and hostile to the interests of the general creditors of the said bankrupt.

"9. Said alleged proceedings in bankruptcy by the said Birmingham Coal and Iron Company et al. against the Southern Steel Company were conceived and are being prosecuted as a fraudulent evasion of the bankrupt law and in the interest of said bankrupt, for the purpose of placing the property of the said bankrupt in the possession and under the control of the friends of the said bankrupt, and not for the interests of all creditors of the said bankrupt."

Evidence was offered in support of these issues, and the same tended to show that a week or ten days before the petitions in bankruptcy were filed that J. D. Lacey, one of the directors of the respondent, had arranged with Edgar L. Adler and his brother, Morris Adler, to act as receivers of the company, in case of necessity, and that when the necessity did arrive, and before the petition was presented to the judge, that he

and his brother allowed their names to be inserted in the petition for receivers and decree of appointment, and made bond prior to and in contemplation thereof. It seems, however, that when the petition was presented to the judge that the other creditors were present by their attorneys, and demand was made of the judge through them that the unsecured creditors should be represented by some additional receivers, which demands were set forth in their petition for receivers, filed at 9 a. m. on October 25, 1907, the day succeeding the filing of the petitions in causes 7977 and 239, and the day of the filing of the petitions in causes 7980 and 240. The alleged bankrupt appeared in court and requested the appointment of the Messrs. Adler. It may consequently be set down as an admitted fact in this case that the alleged bankrupt arranged for and promoted the appointment of the Messrs. Adler as its receivers, and that creditors opposed this in the interest, as was stated, of themselves and of unsecured creditors. In this condition of affairs the court appointed Edgar L. Adler, a man of marked financial ability, Joseph O. Thompson, one of the largest individual landowners in the State, and Elijah G. Chandler, a man of vast experience in the handling of commissary stores. It also appeared that Edgar L. Adler was not interested in, or connected with, or owned a share of stock in the alleged bankrupt.

It will be recalled that the financial panic was at this time in full force over the country with no indication of its end. On October 30, 1907, two of the receivers, Joseph O. Thompson and Elijah G. Chandler, reported to the court that there was difference in opinion among the receivers and that the concern could not be financed in such condition and asked for instructions. Thereupon the court further heard the matter, and during the hearing Edgar L. Adler testified that they (Messrs. Adler) could not finance it. Upon this hearing as to who could finance it the court appointed T. G. Bush, chairman of the receivers, upon his undertaking to do what could be done in this direction; his testimony is in this record; and it will be admitted that if the impossible could have been done, he was the man to do it. He failed, not because he could not manufacture steel and steel products profitably, but because, as shown by the receivers' report, there was no market to sell them for upon any reasonable cash return. The properties were shut down, as were large parts of similar properties of the T. C. I. & — R. R. Co. and of the S. S. & I. Co., similar concerns in this district.

There is other evidence in the record tending to support the charge of collusion between the bankrupt and the Messrs. Adler, but it can not be said that it was necessarily a fraudulent collusion. It was manifestly under all of the authorities the duty of the court to first care for the unsecured creditors by the appointment of disinterested receivers. The authorities quoted do not support the contention that such collusion is necessarily fraudulent.

Justice Lacombe says *In re Moench* (150 Fed. Rep., p. 688):

"It is no doubt true that by committing either the fourth or fifth acts of bankruptcy, where three creditors stand ready at once to take advantage of it by filing a petition, the corporation achieved the object which the act forbids it to secure by its own voluntary petition, but its doing so is not such a 'fraud upon the act' as to prevent the application of the plain language of the act as to the facts presented."

Judge Holt says *In re Duplex Radiator Company* (142 Fed., p. 907):

"But the mere fact that a corporation admits in writing its inability to pay its debts and its willingness to be adjudged a bankrupt on that ground, and thereupon requests certain creditors to file an involuntary petition, constitutes no ground of defense to the proceeding by a creditor who opposes the adjudication."

The present case is stronger than the latter authority, as the bankrupt undeniably sought to have a hand in the management of its estate after bankruptcy in so far as such would exist by the selection of those who were intended to manage it.

The cases *In re Bates Machine Company* (91 Fed., 625) and *In re Independent Thread Company* (131 Fed., 998) seem to favor the contention that the collusion set up is sufficient to defeat the first petition; but the tendency of the decisions is to allow corporations to promote their own bankruptcy, although it does seem to be against the letter of the statute. The saving proposition evidently is that the court should not and will not allow the net result of such collusion to occur, but will, by the appointment of sufficient and disinterested persons to represent both the bankrupt and the creditors, conserve and preserve the interest of all, having special regard to that of none.

It thus seems clear on the facts that the judge would not have been justified in appointing the Messrs. Adler as receivers, and the decisions are without exception to this effect. Judge Lochren says, *In re Hanson* (156 Fed. Rep., 717), of trustees, and what he says is much more applicable to receivers:

"It often happens that it becomes the duty of the trustee to actively antagonize the bankrupt by efforts to discover secreted assets, or to set aside conveyances as fraudulent, or to recover preferences. There should be no color or basis for suspicion of any

partiality or sense of obligation on the part of the trustee toward the bankrupt. Hence, however high the character of a proposed trustee may be, the active interference of the bankrupt in favor of his appointment will render him practically ineligible to appointment as trustee in that bankruptcy."

(See also, *In re McGill*, 106 Fed., 57, 45 C. C. A., 218; *In re Rekersdies*, 108 Fed., 206; *In re Henshel*, 109 Fed., 861.)

Summary.

As has been before pointed out, this large estate is in the possession of the court through its receivers, and all of the orders relating to the same have been made in causes Nos. 7977 and 239; these orders have been many, including the contracts and obligations and certificates of the receivers for large sums of money. All of this must primarily rest for a legal basis upon the original petition filed herein, and that has been attacked as entirely insufficient in law by creditors who have the legal right to make the attack and who probably might be under some moral obligation to make the same if they believed the collusion alleged and proved amounted to and was intended to defraud the creditors or any of them. A careful examination of the petition in the light of the statute and of the decisions may lend a judge grave doubts as to its legal sufficiency to bear the burden placed upon it. Again, if the petition should be dismissed, such nullifying effects upon the many orders of the court and actions of the receivers would be far-reaching and disastrous and may lead the court to do anything it could legally do to avoid such consequence, the direct effect of which would be to place a large liability upon the bond given by the petitioning creditors and to further disturb the unsecured creditors, who are entitled to the first consideration of the court.

On the other hand, the allegations of the original petition in the causes Nos. 7980 and 240, now sought to be incorporated in causes Nos. 7977 and 239 by amendment, are made the subject of a well-directed attack by the latter petitioners and under the evidence might be considered quite as doubtful in matter of fact as the former may be in matter of law. This condition of the record was not brought about by the court, but it has to be faced whether or not its mere statement might be considered as a criticism upon counsel on both sides of the cause, as it is intended to criticize the facts, not the attorneys. But in view of the large interests involved and the baneful effect of dismissing one or all of the petitions, and the wide discretionary powers of the court, it seems that the court should exercise that discretion to the end that the estate may be preserved for those first entitled to it, and such action is recommended; should this be done, the alleged bankrupt will be so adjudicated upon all of the acts of bankruptcy set up and proved, and the court will find support for its action on the one or the other basis, and such will be invulnerable to legal attack in the future, and the administration of the estate will proceed for the benefit of the unsecured creditors, who, in some sense, are the wards of the courts of bankruptcy.

Recommendations.

It is recommended that the court grant the application of the petitioning creditors in causes Nos. 7977 and 239 to amend their petition as set forth in the amendment filed November 29, 1907, as modified by the decree of this court of January 7, 1908, so as to incorporate therein all of the acts of bankruptcy set up by the opposing creditors in their causes Nos. 7980 and 240.

2. It is recommended that you grant leave to the Southern Clay Manufacturing Company, Miller & Hart, and the Cahaba Southern Coal Mining Company to enter their appearance and join in the original petition in causes Nos. 7977 and 239, as set forth in their petition January 13, 1908.

3. It is recommended that the petition of the alleged bankrupt, January 13, 1908, to withdraw its first answer filed November 4, 1907, be granted, and that the motion of William L. Delheim & Co., filed December 7, 1907, to strike out its second answer, filed December 4, 1907, be denied.

4. It is recommended that you grant leave to the petitioning creditors in causes Nos. 7980 and 240 to amend their petition as set forth in their proposed amendment, filed January 17, 1908, to be further heard when those cases are heard.

5. It is recommended that the court do adjudicate the Southern Steel Company a bankrupt, upon the petitions in causes Nos. 7977 and 239, as amended, reserving such questions as it may seem proper to do.

January 21, 1908.

STERLING A. WOOD,
Special Master.

Decree of transfer, consolidation, and adjudication—In the district court of the United States for the northern district of Alabama.

No. 7977. In re Birmingham Coal and Iron Company et al., petitioners, v. Southern Steel Company, respondent, in bankruptcy, southern division. No. 239. In re Birmingham Coal and Iron Company et al., petitioners, v. Southern Steel Company, respondent, in bankruptcy, eastern division. No. 7980. In re Du Bose Brothers Iron Company et al., petitioners, v. Southern Steel Company, respondent, in bankruptcy, southern division. No. 240. In re Du Bose Brothers Iron Company et al., petitioners, v. Southern Steel Company, respondent, in bankruptcy, eastern division. No. 8188. In re Southern Cement Company et al., petitioners, v. Southern Steel Company, respondent, in bankruptcy, southern division. No. 250. In re Southern Cement Company et al., petitioners, v. Southern Steel Company, respondent, in bankruptcy, eastern division.

This matter coming on to be heard on the several petitions as above set forth, and all the other proceedings of petitioning creditors, to have the said Southern Steel Company, a body corporate, adjudicated a bankrupt, come the parties by their attorneys in open court, including the said bankrupt, and all creditors who have entered an appearance in these proceedings, whereupon the court proceeds to hear arguments as to the matters now pending, and duly examines and considers the same.

And it appearing to the satisfaction of the court that said parties and the proceedings thereon pending in the said eastern division of the said northern district should be transferred to the said southern division of the said northern district, and no objection being made to the same, it is ordered, adjudged, and decreed that the said petitions now pending in the said eastern division and all proceedings thereunder be and they are hereby transferred from the United States district court for the eastern division of the northern district of Alabama to the United States district court for the southern division of the northern district of Alabama, sitting in bankruptcy.

It is further ordered, adjudged, and decreed, that the application of the petitioning creditors in causes Nos. 7977 and 239 to amend their said petitions, as set forth in the amendment filed November 29, 1907, as modified by the decree of this court of January 7, 1908, be and the same is hereby granted and the said amendment is allowed so as to incorporate therein all the acts of bankruptcy act set up by petitioning creditors in causes No. 7980 and 240, as prayed.

It is further ordered, adjudged, and decreed, that leave be granted to the Southern Clay Manufacturing Company, Miller & Hart, and the Cahaba Southern Coal Mining Company to enter their appearance and join in the original petition in causes Nos. 7977 and 239, as set forth in their petition of January 13, 1908.

It is further ordered, adjudged, and decreed, that the petition of the alleged bankrupt, filed January 13, 1908, to withdraw its first answer filed November 4, 1907, be granted, and that the motions of William L. Delheimer & Co., filed December 7, 1908, to strike out the said second answer of the said bankrupt, filed December 4, 1907, be and the same is hereby denied.

And it appearing to the court that all of the said original and amended petitions, and all of the proceedings therein, should not be consolidated and proceed henceforth in the said United States district court for the southern division of the northern district of Alabama as one cause, and no one objecting to such consolidation,

It is further ordered, adjudged and decreed, that all and each of the said causes made by said original and amended petition and all of the proceedings thereunder, be and the same are hereby consolidated, and shall henceforth proceed and be conducted as one cause in the said United States district court for the southern division of the northern district of Alabama.

And it appearing to the court that it is admitted in open court by all of the parties to these proceedings, including the bankrupt, that acts of bankruptcy for the adjudication of the said Southern Steel Company, a bankrupt, are alleged in each of the said petitions, and exist, and that causes Nos. 7977 and 239 as amended allege all of the said acts of bankruptcy contained in the other petitions, except those set up in causes Nos. 8188 and 250, as well as independent acts of bankruptcy; and it appearing from the report of the special master, and from the evidence before him, that an adjudication should be had upon the grounds and for the causes set up in the said petitions as amended, and that there is no necessity for passing upon the exceptions herein filed, all of the said causes being now consolidated and all of said parties admitting in open court that the said respondent should at this time be in this consolidated proceeding now adjudged a bankrupt:

It is further ordered, adjudged and decreed, that the Southern Steel Company, a corporation, be and is hereby adjudged a bankrupt within the true intent and meaning of the act of Congress relating to bankruptcy.

It is further ordered, adjudged and decreed, that Sterling A. Wood be and he is hereby appointed referee in bankruptcy in the above entitled causes, it being deemed necessary that such appointment be made to assist in expeditiously transacting the bankruptcy business pending in the said district, and he will give bond as such referee in the sum of \$5,000, with condition and with surety as required by law.

It is further ordered, adjudged and decreed, that the first meeting of the creditors of the said bankrupt be held on Monday, February 3, 1908, at 10 o'clock a. m., and that due notice of the same be given to all parties in interest; and that said meeting be held in the Government building at Birmingham, Ala.

All other questions are specially reserved.

Done in open court this the 21st day of January, 1908.

OSCAR R. HUNDLEY,
United States District Judge.

A true copy.

STERLING A. WOOD, *Referee.*

2/7/8.

Report of referee to judge as to election of trustee in the district court of the United States for the northern district of Alabama.

No. 7977. In re Birmingham Coal and Iron Company et al., petitioners, v. Southern Steel Company, respondent, in bankruptcy, southern division. No. 239. In re Birmingham Coal and Iron Company et al., petitioners, v. Southern Steel Company, respondent, in bankruptcy, eastern division.

Present and presiding, Hon. Oscar R. Hundley, judge of said court.

Present: Sterling A. Wood, special referee. Campbell & Johnson, Percy & Benners, and E. H. Dryers, attorneys for receivers. Powell & Blackburn, R. B. Smyer, A. G. and E. D. Smith, Tillman, Grubb, Bradley, and Morrow, A. Leo Oberdorfer, Thompson & Thompson, Lee J. Marx, A. Latardy, Z. T. Rudolph, I. D. Hobbs, A. C. and H. R. Howze, M. J. Gregg, W. S. Burrow, E. C. Crowe, John F. Williams, John Dickey, jr., G. G. Fletcher, C. W. Roberts, and others, representing creditors as attorneys. O. R. Hood, attorney for the respondent.

After the court was opened, Mr. Bradley asked if the officers of the corporation would be present for examination, as he thought that that would be to the advantage of all to have an examination.

The special referee stated that this meeting was for the examination of the bankrupt and election of the trustees, and such other matters as might come up. He also stated that most of the officers of the corporation had been examined.

Mr. BRADLEY. I was not present at that examination, so do not know what transpired. I particularly wanted to know about the formation of the company.

The COURT. That examination of the officers of the bankrupt corporation can be held later.

Mr. BRADLEY. Yes, sir; but it would have great effect now on the election of the trustees.

The COURT. That is correct. But you can still have your remedy by a motion before the court.

Mr. BRADLEY. It is easier to elect the right person than to elect the wrong person and afterwards remove him.

The COURT. It seems to the court that the information you desire so that you can satisfy yourself representing your creditors as to how you shall vote in the matter of electing a trustee. I am not inclined to delay anything in reference to this matter. I want the trustees elected to-day. I think you have your remedy if the later developments show that a person elected as trustee is not fit and competent to serve. To examine the bankrupt means a lot of work and a lot of time. It would take more than two weeks to get through with the examination of the bankrupt.

Mr. Bradley stated that it was his opinion that the examination would not take more than a day or two.

The COURT. You suggest the postponement of the election of the trustees until the bankrupt can be examined?

Mr. BRADLEY. Yes, sir.

Mr. POWELL. On the hearing before the special master, we only went into the question of solvency or insolvency. The receivers then demanded the stock record, and so forth, of this bankrupt, which Mr. Bradley desires to see. These have not been produced.

The COURT. Was any reason given as to why they were not produced?

Mr. HOOD. The books the gentleman speaks of are the stock book and the certificate book.

Mr. POWELL. The entire record of the business.

Mr. HOOD. These are in New York, in the hands of the trust company. We will endeavor to produce these books here at any time we can. The bankrupt can not promise to get them.

Mr. J. J. Willett, attorney for sundry creditors, arose and said: I trust you will not put off the election. I think that it would take three or four weeks to so examine the bankrupt. The examination would have to show who owned the shares of stock, what was the consideration, and so forth. It may have to be adjourned and continued in New York. I represent the largest unsecured creditor, I believe. I believe that the trustees elected to-day will do their full duty, and that the court will see to this. The examination held was merely a preliminary examination to find about the solvency of the bankrupt. As Mr. Bradley says, I take it the main security of the unsecured creditors is stockholder's liabilities under the laws of Alabama. This ought to be prosecuted with the utmost vigor, and that therefore the election of the trustees is necessary. I think that the examination of the bankrupt will be then next in order. It will take several weeks to find out who are the stockholders, what they paid for their stock, and where they reside, and so forth.

Mr. BENNERS. I do not think a useful purpose would be subserved by postponing the election of trustees for an examination of the bankrupt. It is a matter of common knowledge that an examination has been held. There has already been some evidence adduced as to the stockholders' liability. As a matter of course, the trustees elected have the duty of enforcing the matter of this liability. The facts first have to be obtained, and then the lawsuits in regard to the matter can be started. Whoever are elected as trustees, it will certainly be their duty to enforce the liability if it exists. The trustees can get a great deal of information out of the books, and then an examination of the bankrupt will do a lot of good. It occurs to me that whoever conducts the examination of the bankrupt should have in his possession all the facts and all the light possible. If we were to go into an examination of the bankrupt to-day, nobody would be properly able to conduct an intelligent examination. After the trustees have gotten up facts they can turn these over to their counsel, and have an examination which will be much better. There are other reasons that make it important that the trustees be elected now. Speaking for the creditors, which I represent, it is our desire to have the election of the trustees now and the examination of the bankrupt then following.

Mr. OBERDORFER. I agree with Mr. Bradley. I desire also to show the additional reason that from its inception the bankrupt has attempted to control the administration of this bankrupt estate. We creditors who have opposed that attitude during the entire proceedings have reason to fear that this is the most critical period in that effort to control the trustees. We fear that in making a slate, as it is rumored has been made, the bankrupt has played a certain part, and this should be investigated.

On being questioned as to who composed this slate, Mr. Oberdorfer said: The newspapers day after day have named the candidates. The bankrupt, or some of the officers of the bankrupt corporation, were present and took a prominent part in the meeting of some of the creditors held sometime ago. That is one of my objections to holding the election before we hold the examination.

The court here stated: Here are many parties before me who are interested in the estate. The matter has been in the hands of the receivers. I know judicially, I can say, that there is an effort to settle up this matter, and I think it is my duty as a judge to aid that as far as possible. What is the situation this morning? If I permit the election of trustees to go forward, there is a remedy for every creditor if an improper trustee is elected. There is a remedy in a motion before me to investigate the character, fitness, or ability of the trustee. But if I postpone this this morning, I may do an irreparable damage thereby to the estate. So I feel it my duty to decide in favor of that course where a remedy is provided, and where no wrong can be done. Therefore I shall add that the election of trustees must proceed, and anyone feeling himself grieved by the personnel of the trustees elected has proper remedy before the law. This is the first time that a further examination of the bankrupt has been brought to my attention. If it had been suggested when the receivers were appointed, the examination would have been completed by now. So I hold it is my duty to let the election of trustees proceed, and all parties in interest have their remedy by review of anything that the receivers or creditors may do in the election of said trustees. I therefore decide that the election of trustees must go forward, as previously advertised and notice given. The court will take a recess until 3 o'clock this afternoon, and the referee, Sterling A. Wood, will preside over the election of a trustee.

Court was accordingly adjourned until 3 o'clock p. m., February 3, 1908.

In the district court of the United States for the northern district of Alabama.

No. 7977. In re Birmingham Coal and Iron Company, petitioners, *v.* Southern Steel Company, respondent, in bankruptcy, southern division. No. 239. In re Birmingham Coal and Iron Company et al., petitioners, *v.* Southern Steel Company, respondent, in bankruptcy, eastern division.

Present and presiding, Sterling A. Wood, special referee in above-entitled cause.

Present: Campbell and Johnson, Percy and Benners, and E. H. Dryer, attorneys for receivers.

Powell and Blackburn, Percy and Benners, R. B. Smyer, A. G. and E. D. Smith, Tillman, Grubb, Bradley and Morrow, A. Leo Obedorfer, Thompson and Thompson, Lee J. Marx, A. Latardy, Z. T. Rudolph, I. D. Hobbs, A. C. and H. R. Howze, M. J. Gregg, W. S. Burrow, E. C. Crowe, John F. Williams, John Dickey, jr., G. G. Fletcher, C. W. Roberts, J. J. Willett, and others, representing creditors as attorneys.

O. R. Hood, attorney for the Southern Steel Company, bankrupt.

This the 3d day of February, 1908, the first meeting of creditors in the above-entitled cause was held, Sterling A. Wood, special referee in this case, presiding.

Mr. Benners, representing a large number of unsecured creditors, put in nomination the names of W. H. Hassenger, John E. Morriss, and T. S. Kyle for trustees of the estate of the bankrupt in this cause.

Mr. John Dickey, of Philadelphia, seconded the nomination of the three gentlemen for trustees, in behalf of the creditors he represented.

Mr. Rudolph then nominated Messrs. W. H. Hassenger, J. O. Thompson, and T. H. Aldrich as trustees. (His remarks were lengthy and are therefore not set out.)

Mr. Oberdorfer seconded the nomination of the three last-named gentlemen.

Mr. Powell stated that it was his idea that the law required a list of all claims to be made and filed for the benefit of counsel.

The court stated that several lists were already filed, but that in order to allow all attorneys ample time to file lists of the claims they represented, the court would adjourn until 2 o'clock p. m., February 3, 1908.

When the court reopened the meeting of creditors at 2 o'clock p. m., Mr. J. O. Thompson stated that he had not authorized the nomination made by Mr. Rudolph and stated that if elected he would not serve.

Mr. Rudolph rose and withdrew Mr. Thompson's name from nomination, stating that he had nominated him in behalf of certain local creditors who had requested it.

Mr. Benners moved that the three gentlemen receiving the highest number of votes be declared the trustees. This motion was seconded and carried.

Mr. Rudolph seconded the motion, and desired to make an amendment that there be three trustees so that this should appear on the records. The court stated that as there had been three nominations by each side, it was taken for granted that the creditors desired three trustees. The motion was then carried.

The referee then appointed Mr. H. C. King, jr., and Mr. C. R. Wood to tabulate the vote and Mr. Forsyth and Mr. H. R. Howze to overlook and assist in the tabulation.

Mr. Powell objected to the claim of R. D. Burnett Company, because it was a preferred claim. It was laid aside and not counted in the voting.

Mr. Rudolph objected to the claim of the Birmingham Packing Company, same reason, which was laid aside and not counted in the voting.

Mr. Marx objected to the claims of Trotter Brothers and Chattanooga Southern Railway Company, alleging a preference. Mr. Marx's objection was overruled and he excepted thereto.

Mr. Marx objected to the five claims represented by Messrs. Tillman, Grubb, Bradley and Morrow, stating as reasons that the nomination of these men was made at the interest and solicitation of the bankrupt, and because many preferences had been created in certain of the claims by payments within the four months' limit, and offered to introduce witnesses to show the formation of a certain committee of the creditors with the cooperation and at the instigation of the bankrupt.

Attorneys on both sides of the question argued the matter. After hearing the arguments for and against, the referee overruled the objections of Mr. Marx. He excepted to said ruling of the referee duly then and there.

Mr. Powell objected to certain claims represented by Messrs. Percy and Benners, stating as reasons that they were preferred, and were about to be voted at the instance of the bankrupt, and were not filed with the referee a sufficient length of time to allow inspection looking to determination of preferences, and also because the claims were secured. After argument on both sides, the referee overruled the objections of Mr. Powell, who then and there duly took exception to such decision of the referee.

Mr. Powell objected to the Cosby claim, the Hammond Company claim, and the claim of Saebel Brothers, for the same reasons. The court overruled his objections, and *thereupon he then and there duly took exception thereto.*

After the conclusion of the voting, the tellers tabulated the result while a recess was taken. When the meeting reconvened, the following was the result handed in by the tellers, they agreeing: Mr. Hassinger received votes from four hundred and ninety-five claims, aggregating \$922,768.90; Mr. Morriss, four hundred and seventy-one claims, \$906,699.48; Mr. Kyle, four hundred and fifty-two claims, \$903,517.33; and Mr. Aldrich, forty-six claims, aggregating \$20,132.03. The court thereupon announced that Messrs. Hassinger, Kyle, and Morriss had been elected trustees of the estate of the bankrupt in this cause.

On motion of Mr. Benners, seconded by Mr. Johnston, the meeting voted to recommend to the judge that the bond of the trustees be fixed at a joint bond of \$100,000. After lengthy discussion, said motion was carried. The discussion was as to whether a joint or separate bond should be recommended.

Mr. W. P. G. Harding, president of the First National Bank, moved as follows: "I desire to move that the thanks of the unsecured creditors and all parties interested in the Southern Steel Company are due to and are hereby tendered to Messrs. T. G. Bush, Edgar L. Adler, J. O. Thompson, and Elijah G. Chandler, receivers, who were appointed by United States Judge Oscar R. Hundley, for the prudent, careful, and able management of the trusts confided to their keeping."

The motion was seconded by Mr. Benners, of attorneys for creditors, and was carried unanimously, and it was so ordered.

Mr. Benners moved that when the meeting adjourn it stand adjourned until the 17th of February, at 10 a. m. This motion was seconded. After discussion, which lasted for some time, the motion was carried. Thereupon a recess of the meeting of creditors was declared and the referee reported the proceedings to the judge.

The court reconvened about 3.30 p. m., February 3, 1908, Judge Oscar R. Hundley present and presiding.

The referee read to the court the result of the voting of the creditors in regard to the election of trustees, asking that the trustees elected by a majority in number and amount of claims be confirmed.

Mr. Powell presented to the court certain objections to the confirmation of the trustees, in writing, which objections are attached to the report of the special referee to the court.

After a long argument of Mr. Powell's the court overruled his said objections, and confirmed the three gentlemen, Messrs. Hassinger, Morriss, and Kyle, elected by the creditors, as the trustees in this cause.

The court asked for a report from the receivers.

Mr. Campbell, of attorneys for receivers, stated that the report was not yet completed, and asked that the receivers be given until February 20 to complete their report. The court granted this request, and it was so ordered.

The referee reported that the creditors recommended a joint bond of \$100,000 for the trustees. After discussion and after all had been heard from, the court ordered that the bond of the trustees be fixed at a joint bond of \$100,000.

Mr. BENNERS. I think the act contemplates that the court will appoint appraisers to appraise the assets of the corporation.

The COURT. I will do that, and will try to get men who are conversant with this business, men who are entirely disinterested. If I should happen to name any one who is interested, please call my attention to it, and I will name somebody else. I will name them this evening.

Mr. Benners here introduced to the court Mr. John Dickey, jr., of the Philadelphia bar and United States Supreme Court bar, and stated that Mr. Dickey desired to be permitted to practice here.

The court stated that Mr. Dickey could practice here after having taken the necessary oath and paying the requisite fees.

Thereupon the court went into recess until February 10, 1908, at 10 a. m.

In the district court of the United States for the northern district of Alabama, southern division.

No. 7977. In re Southern Steel Company, bankrupt, in bankruptcy.

FIRST MEETING OF CREDITORS.

To the Hon. OSCAR R. HUNDLEY, judge of said court.

The undersigned referee begs leave to report to your honor that the first meeting of the creditors of the said bankrupt was held at the Government building, in the city of Birmingham, Ala., on Monday, February 3, 1908, at 10 o'clock a. m., in accordance with the decree heretofore made by your honor on the 2d day of January, 1908.

Present: Sterling A. Wood, referee; Percy & Benners, attorneys for petitioning creditors; Campbell & Johnson & Dryer, attorneys for receivers; O. R. Hood, attorney for bankrupts; and other creditors and attorneys.

The meeting was called to order by the referee and Mr. H. J. King and Mr. C. R. Wood appointed secretaries and tellers.

The following parties were then nominated for trustees of the said estate:

Mr. Benners, of the firm of Percy & Benners, on behalf of the creditors represented by him, nominated the following three trustees:

Mr. W. H. Hassinger, Mr. John E. Morriss, and Mr. T. S. Kyle.

These nominations were seconded by Mr. John Dickey, jr., and other attorneys.

Mr. Rudolph, of the firm of Ward & Rudolph, nominated Messrs. W. H. Hassinger, J. O. Thompson, and T. H. Aldrich.

Whereupon an adjournment on motion was taken until 2 o'clock in order that all creditors or their attorneys might have ample time within which to examine the claims on file.

On reconvening at 2 o'clock, Mr. J. O. Thompson appeared and stated that he had not authorized his name to be used and that he did not desire to be elected trustee and could not accept the office if elected, and asked that his name be withdrawn, and personally requested that no vote should be cast for him.

Mr. Rudolph stated that he had not been authorized to nominate Mr. Thompson, but had nominated him because of his well-known integrity and ability and fitness for the place, and because of the record he has made in serving the creditors as one of the receivers of the estate, but, in deference to his wishes, he withdrew his name.

The meeting then proceeded to vote, and Mr. H. R. Howze, jr., was appointed to assist Secretary Wood and Mr. A. R. Forsyth was appointed to assist Secretary King.

On casting up the vote the following was found to be the result:

For Hassinger, Morriss, and Kyle.....	\$902, 636. 87
For Hassinger, Aldrich, and Kyle.....	15, 195. 96
For Hassinger, Aldrich, and Morriss.....	4, 052. 61

And the following is the vote by name, number, and amount:

Name.	Number.	Amount.
Hassinger.....	495	\$922, 768. 90
Morriss.....	471	906, 699. 48
Aldrich.....	46	20, 032. 03
Kyle.....	452	903, 517. 33

And the result was declared accordingly.

Upon motion the bond of the trustees was fixed at the sum of \$100,000.

Upon motion of Mr. Benners the meeting, when the same adjourned, should adjourn until Monday, February 17, 1908, at 10 o'clock a. m., for the examination of the bankrupt.

A full report of the entire proceedings is certified to your honor, from which all that transpired at this meeting will be seen.

Numerous objections were made to the rulings of the referee, and upon the conclusion of the meeting the objections to the confirmation of the trustees herewith transmitted to your honor were filed.

The undersigned referee has the honor to recommend that you will confirm the appointment of Messrs. Hassinger, Morriss, and Kyle as trustees of the said estate and fix their bond at the sum of \$100,000, and that your honor will set some appropriate time for the receivers to make their final report.

Witness my official signature this February 3, 1908.

_____, Referee.

Decree confirming trustees and appointing appraisers in the district court of the United States for the northern district of Alabama, southern division.

In re Southern Steel Company, bankrupt, in bankruptcy.

This cause coming on this day to be heard and being submitted upon the report of the referee, Hon. Sterling A. Wood, as to the nomination and election of Mr. W. H. Hassinger, Mr. John E. Morriss, and Mr. T. Stonewall Kyle, as trustees of the said bankrupt estate, and the recommendation of the said referee thereon being considered and understood by the court,

It is ordered, adjudged, and decreed that the election of the said three persons as trustees be, and the same is hereby, ratified and confirmed.

It is further ordered, adjudged, and decreed that before taking charge of the properties of the said bankrupt the said trustees shall make a joint bond in the sum of \$100,000, of good and sufficient surety to be approved by the referee and conditioned according to law, to properly perform the duties of their office as such trustees.

It is further ordered, adjudged, and decreed that J. W. McGueen, W. M. Drennen, and George Shirling, three disinterested persons be, and the same are hereby, appointed appraisers to appraise the real and personal property belonging to the estate of the said bankrupt set out in schedules now on file in this court, and report their appraisal to the court. Said appraisal to be made as soon as may be, and the appraisers to be duly sworn.

It is further ordered, adjudged, and decreed that the receivers heretofore appointed do make and file a report of their acts and doings as such receivers down to the time of the making of their said report, which said report shall be made by them on or before the 20th day of February, 1908; that until said report is made, said receivers be, and they hereby are, authorized and directed to proceed with the collection of all accounts and claims owing to the said bankrupt and the said bankrupt's estate, whether the same arose during their administration as such receivers or prior to that time; that the said receivers retain and keep any and all funds now in their hands or under their control as such receivers until they make their said report, but paying therefrom and from such collections as they may make all obligations which they as such receivers have heretofore incurred under the authority of this court, and shall include in their report all such receipts and disbursements; that the said receivers be, and they hereby are, authorized and directed to retain possession of the books and papers of the bankrupt and of their receivership of said estate until until they make and file their said report, in order to close their administration in due and proper form; and that all other property of the bankrupt in the hands of the said receivers shall be by the said receivers delivered to the said trustees hereinbefore named when the said trustees shall have filed their joint bond and fully qualified as provided by law.

Done in open court in the city of Birmingham, this, the 3d day of February, 1908.

OSCAR R. HUNDLEY,
U. S. District Judge.

A true copy,
STERLING A. WOOD,
Referee.

In the district court of the United States for the northern district of Alabama, southern division. In the matter of Southern Steel Company, bankrupt. In bankruptcy.

At Birmingham, in said southern division of the said district, on the 2d day of November, A. D. 1907.

And now the said Southern Steel Company appears and for answer to the petition filed by Crane and Company, Roberts-Johnson and Rand Shoe Company, M. R. McNeill, and M. B. Dubose denies that it has committed the several acts of bankruptcy set forth in said petition, or that it is insolvent, or that its principal place of business was, at the time of filing said petition, in the city of Birmingham, Jefferson County, Alabama, and avers that it should not be declared a bankrupt for any cause in said petition alleged; and this it demands that the same be inquired of by a jury.

(Signed)

SOUTHERN STEEL COMPANY,
By O. R. HOOD, Attorney.

STATE OF ALABAMA, *Jefferson County*:

Personally appeared before me, J. L. Dillon, a notary public, in and for said county and State, R. D. Carver, who, being duly sworn, says that he is secretary of the Southern Steel Company, and that the facts set forth in the foregoing answer are true.

(Signed)

R. D. CARVER.

Subscribed and sworn to before me this 2d day of November, 1907.

(Signed)

J. L. DILLON, Notary Public.

A true copy:

STERLING A. WOOD, Referee.

MARCH 14, 1908.

Mr. Wood also put in evidence the report of receivers to the creditors of Southern Steel Company and a stenographic report of the hearing before him on the petitions in bankruptcy against the Southern Steel Company.

The subcommittee thereupon adjourned until Monday, February 24, 1908, at 2 o'clock p. m.

WASHINGTON, D. C., *February 24, 1908.*

The subcommittee met at 2 o'clock p. m.

Present: Senators Dillingham (chairman), Knox, and Clarke of Arkansas; also Senator Johnston and Representatives Richardson, Clayton, and Craig.

STATEMENT OF OSCAR R. HUNDLEY—Continued.

Mr. HUNDLEY. Before proceeding I wish to speak very briefly further in reference to a statement I made about Mr. Benners's testimony and in reply to a question by Senator Knox on page 359 of the record.

I stated that at the time Mr. Benners came to me at Huntsville on the morning of October 25, he stated orally that the Adlers would put up money to finance it. That statement was not intended to convey the impression that Mr. Benners made that statement as representing the Adlers, or by their authority. At that time he was representing the first petitioning creditors, with claims of \$9,000, and the representation made by him was like that made by other counsel present, that certain parties would put up money to finance it. But Mr. Benners's statement on page 5 of the record states in his way what passed between us, and I shall read that and comment upon it briefly:

I stated to Judge Hundley who the two Adlers were whom we suggested for receivers. The two Adlers were Morris, who is present here as a witness, and his brother. I stated—and these are facts—that they were men in that community of excellent reputations; that they were men of large means, and at that time possessed a large amount of cash. They had on deposit several hundred thousand dollars. At that time the banks in Birmingham, as I judge elsewhere, were unable to make any loans at all to individuals on any security.

Representative BURNETT. What was the date of that?

Mr. BENNERS. October 24th, last.

I presented to Judge Hundley letters from the two principal banks in Birmingham—the First National Bank and the Birmingham Trust and Savings Company—stating the qualifications of the Adlers, stating that they had just sold out their interest in another large similar corporation and had a large amount of money; that they had been very successful in the operation of this other corporation; and that they had the confidence of the business community; and that they were men of good business character and integrity.

That is the statement. When I stated that they would "furnish," I simply meant to state, as was the fact, and as was stated by Mr. Benners, that these men were in a condition to do it—that they could do it. Neither the Adlers nor anyone representing them or claiming to represent them ever stated to me directly or indirectly that the Adlers had authorized them or that they were authorized to state that they would put up money to finance this institution. The first time that I ever had a statement from the Adlers, or any of them, was the statement in open court by Edgar Adler, five days after the receivers were appointed, that neither he nor his firm would put up

the money; and the record so shows that. In connection with that I refer to the testimony of Mr. Oberdorfer to the same effect (page 450 of the record), and also to the testimony of Mr. Blackburn.

Senator KNOX. You have referred to a question I asked you, to be found on page 359, but I call your attention to a question I asked on page 358, reading: "Do you mean when Benners presented the petition which contains an averment of the ability of the Adlers to furnish the money if they were appointed," to which you replied, "Yes."

Mr. HUNDLEY. Yes, sir.

Senator KNOX. As I understand you now in reference to that, you say that that is incorrect?

Mr. HUNDLEY. They said that they would furnish it, but they did not speak by authority of Adler. They were not representing the Adlers, but they were representing creditors of claims to the extent of \$9,000. They simply stated that orally in the general conversation. In reference to that I say I refer to the testimony of Mr. Oberdorfer and Mr. Blackburn, who were present at the time, and who have testified to the same effect.

Representative BURNETT. You did not make inquiry as to that at the time, did you?

Mr. HUNDLEY. No, sir; I did not have time. Those receivers were appointed within two hours from the time the petition was presented.

Representative CRAIG. I did not get quite through. There are one or two other questions I wanted to ask Judge Hundley.

Senator DILLINGHAM. You may proceed.

Representative CRAIG. How many times were you convicted in the county court at Huntsville?

Judge HUNDLEY. One time.

Representative CRAIG. Only once?

Mr. HUNDLEY. Only one time in my life.

Representative CRAIG. That was in the county court of Madison County?

Mr. HUNDLEY. Yes, sir.

Representative CRAIG. Who is the present clerk of that court?

Mr. HUNDLEY. I think Mr. Roper.

Representative CRAIG. He has charge of those records?

Mr. HUNDLEY. Yes, sir. In that connection I will say that I stated in my testimony that this was twenty-seven years ago, which it was. I stated in my testimony that I plead guilty. Now, that is my recollection of it. It may have been a conviction. I have not seen the record in twenty-seven years. I may have plead guilty, or it may have been a conviction; I do not know. There might be some record of my conviction, and these gentlemen might say, because I said "I plead guilty," that that means another case.

Representative RICHARDSON. Did you not say that Nick Davis, who was Judge Richardson's nephew, told you that if you did not plead guilty he would testify against you?

Mr. HUNDLEY. No; my recollection is that Nick Davis said he would convict me if he had to go on the stand himself.

Representative RICHARDSON. Yes; and for that reason you plead guilty?

Mr. HUNDLEY. I did not say that.

Representative RICHARDSON. Well, he was a witness against you?

Mr. HUNDLEY. My recollection is—if you have the record here I want to see it. I have not seen it for twenty-seven years. I think it is fair that I should see the record.

Representative CRAIG. Here is the record. I was thinking of introducing it.

(Hands a paper to Mr. Hundley, who examines it.)

Mr. HUNDLEY. Where is the record of the conviction? The record of the conviction is what I want. You have the certified copy of the conviction, I suppose—where I was convicted of gambling twenty-seven years ago. This shows an indictment and the name of a witness, but it does not show the result.

Representative CRAIG. But I can show it to you, if you will let me have it. My purpose, if the committee please, in introducing this was in answer to Judge Hundley's statement the other day that he was convicted without a jury—tried by Judge Richardson without a jury.

Mr. HUNDLEY. That is my recollection.

Representative CRAIG. And that you were prosecuted by Davis, who was then solicitor, and that he told you that he would take the stand if you did not plead guilty?

Mr. HUNDLEY. I do not recollect that that was my statement. It was twenty-seven years ago, and I think I ought to have the record before me so as to refresh my memory.

Representative CRAIG read the paper, as follows:

Grand jury docket, Madison County, fall term, 1881.

No.	Parties.	Charge.	How disposed of.	Name of witness.
64	The State v. Oscar Hundley.	Gaming...	True bill.....	Geo. L. Davis.

Minutes of county court, July term, July 27, 1881.

State of Alabama v. Oscar R. Hundley. 812.

Comes Henry C. Jones, solicitor who prosecutes for the State in this behalf and also comes the defendant in his own proper person as well as by his attorneys. Solicitor asks a nolle prosequi as to first count in indictment and moves to amend second count by striking out the words (or other things of value): Amendment allowed by court and being put at the bar, hearing the indictment in this cause read to him, pleads not guilty thereto. And defendant being asked in open court by the court if he will have a jury, defendant demanded a jury. Defendant's objection to reading the complaint overruled.

And thereupon comes Sydney J. Mayhew and eleven other good and lawful men, who, being duly elected, empaneled, sworn, and charged well and truly to try the issue in this case and a true verdict render according to the evidence, on their oaths, do say: We, the jury, find the defendant guilty and assess a fine of fifty dollars, which, not being presently paid, the defendant is asked in open court by the court if he has anything to say why the sentence of the court should not be pronounced against him, says nothing; wherefore the court sentenced the defendant, Oscar R. Hundley, to pay to the State for the use of Madison County fifty dollars for the offense committed and for costs one hundred and sixty-six 35/100 dollars, to which defendant excepted and tenders his bill of exceptions duly signed and makes bond, and is granted an appeal to the next term of the supreme court of State of Alabama.

STATE OF ALABAMA, Madison County:

I, H. B. Roper, county clerk in and for the county of Madison, State of Alabama, and clerk of the circuit court, hereby certify that the attached sheet, numbered one, is a

true and correct copy or transcript of the grand jury docket "A" as appears on page 88 in record of the county court of Madison County, Alabama; and sheet numbered two hereto attached, is a true and correct copy of the minute of the proceedings as shown by Minute Book No. 2, page 123, of the county court record in this office.

Given under my hand and seal this 1st day of January, 1908.

H. B. ROPER,
Clerk Circuit Court.

Representative CRAIG. I also desire to get into the record that certificate of Mr. Roper, clerk of court there—was he not?

Mr. HUNDLEY. Yes.

Representative CRAIG. That paper is introduced for the further purpose of showing that Judge Hundley at that time demanded a jury and was not tried by "Judge Richardson without a jury"—that he was tried on an indictment and not on information and belief brought in by a little negro, as given in the testimony.

Representative BURNETT. And the solicitor was not Davis?

Representative CRAIG. Not Davis.

Mr. HUNDLEY. Gentlemen, this is the merest quibble that I have ever seen. As stated by Judge William Richardson, the solicitor of the circuit was Henry C. Jones. The solicitor for the county was a deputy, Nicholas Davis, appointed by Judge Henry C. Jones. As a matter of course, all pleadings and prosecutions would be in the name of the circuit solicitor, and not in the name of his deputy solicitor, Nicholas Davis.

Now, as to whether this is an indictment, you must bear in mind this was twenty-seven years ago; but my mind is being refreshed. This record from the grand jury, so far as I see, does not show that I was tried upon the indictment found by the grand jury. I am as positive as anything that that trial was upon the prosecution on information and belief of Dixie White.

After the prosecution, all parties who played in Mr. Davis's office were summoned as witnesses before the grand jury and indictments were had before the grand jury against all parties who were in that office. And I presume that the indictment brought here is the same indictment that was brought after the prosecution of Dixie White.

Senator CLARKE, of Arkansas. Can the court on the motion of the prosecuting attorney prosecute on information and belief after an indictment of a grand jury?

Mr. HUNDLEY. Yes; it could at that time.

Senator CLARKE, of Arkansas. After an indictment?

Mr. HUNDLEY. Yes.

Senator CLARKE, of Arkansas. They could amend an information, but I did not know that they could amend an indictment. That was the accusation of the grand jury. Who was the Davis by whom the indictment was brought?

Mr. HUNDLEY. George L. Davis, brother of Nicholas Davis, and the first cousin of Judge Richardson. That is just the situation. Of course, if Henry C. Jones's deputy was prosecuting this case, it would be in the name of the circuit solicitor and not in the name of his deputy.

Representative BURNETT. The indictment, you mean?

Mr. HUNDLEY. Yes. If the deputy were present and the solicitor were absent, the papers would be in the name of the solicitor.

Representative CRAIG. The reason I introduced that paper (which was already here) is because of the fact—you were absent some time ago, Senator Knox, and did not hear that part of the testimony in

in which Judge Hundley stated that he was guilty of this offense and plead guilty in the court.

Mr. HUNDLEY. That is my recollection of it.

Representative CRAIG. That he was not tried by a jury.

Representative BURNETT. Not on a true bill.

Representative CRAIG. Yes; and that it was on information and belief.

Mr. HUNDLEY. I plead guilty.

Senator KNOX. What difference does it make whether he was convicted by a jury or plead guilty? The important fact was that he was guilty, was it not?

Representative CRAIG. I wanted to get the facts right on the record.

Representative RICHARDSON. All through the proceedings Mr. Hundley has been contending that he did not get a fair trial.

Mr. HUNDLEY. I beg your pardon.

Representative RICHARDSON. Well, let the record show. That paper was introduced just simply to show what the facts were. My two cousins played in the same game, and they were not indicted, he said. That is put in there, and will be further followed to show that effort on his part to inject into this case the fact that he did not get a fair trial because I happened to be judge of the court, and my cousin a deputy solicitor. Mr. Hundley also stated in connection with his evidence that the fee of \$60 was given to Mr. Davis. Now that was not given to Mr. Davis.

Senator KNOX. Would he not be everlastingly estopped from claiming that he did not have a fair trial if he plead guilty?

Representative RICHARDSON. I think so, but the whole of it is based on the fact that he did not have a fair trial because I was judge.

Mr. HUNDLEY. My purpose in saying that had nothing to do with nor was it for the purpose of intimating that I did not have a fair trial, because the record shows that I plead guilty, and the record will show that I said also in answer to the questions of Judge Richardson that I was guilty.

Now, I have been testifying after twenty-seven years as to the facts as I recollected them. Here is an indictment—I do not know; I presume that indictment was found against me—I presume that after the prosecutions by Dixie White all of the parties who were found in the game were indicted by the grand jury.

Senator KNOX. Do you claim, or do you disavow, any intention of having us believe, that you did not have a fair trial on account of Judge Richardson being on the bench?

Mr. HUNDLEY. I do not claim, nor have I ever claimed, that. Those who heard me will say that I stated I was guilty.

Representative RICHARDSON. I only ask this committee to hear Judge Hundley's testimony already delivered on the subject.

Senator KNOX. If he disavows it now, no matter what he said before, that is only a question that goes to his veracity, and I think we already have testimony on it. I do not think we ought to take time to prove that you were unfair, when he says you were not.

Representative RICHARDSON. And the Supreme Court affirmed it.

Mr. HUNDLEY. This case never was taken to the Supreme Court, and I never have made any claim of that kind.

Representative BURNETT. The testimony of Judge Hundley shows, as you will find if you will read it, that Judge Richardson went out of his way in the matter.

Mr. HUNDLEY. I simply stated the facts about this conviction, as nearly as I could recollect them after twenty-seven years, and admitted frankly then that I was guilty and plead guilty. In stating that I plead guilty I was in error; so it seems by this record.

Representative CRAIG. Did you not state in your testimony that it was the general impression here at the time that this whole thing was understood to be "a fee-making scheme" on behalf of the officers?

Mr. HUNDLEY. No, sir; it was mentioned so in the newspapers. I did not intend to bring that in. You will find that my statement said that the public press at the time made that statement. Here is what I had allusion to: I read from the Huntsville Democrat, the leading Democratic paper published in Huntsville. It says:

A considerable flutter, and no little indignation, have been produced in our community by the service of a large number of writs, variously estimated at 80 to 140, on parties charged with various offenses—illicit sale of liquor, gambling, lewdness, etc.—nearly all said to be based on the information and affidavit of a little negro bootblack, "Dixie White, his x mark." The subjects of arrest express great indignation that they are arraigned on any charge based on the testimony of Dixie, a boy of notorious bad character, who has been repeatedly before the mayor, and convicted of various offenses, larceny among them; who has been in our county jail for two months, under the charge of breaking open and entering the store of Halsey & Bro., and stealing therefrom a gold watch and sundry other valuable articles, found in his possession on his arrest; and who was released from jail only a few days ago, by being brought out by writ of habeas corpus, and getting the amount of his bail bond greatly reduced.

■ The Huntsville Advocate, the leading Greenback paper published in the city, says:

"No little excitement has been occasioned in our city this week by the arrest of a large number of citizens charged with gaming, selling goods on the Sabbath, etc., upon, as we are informed, the affidavits of a negro bootblack, Dixie White. Dixie has been in jail since about the middle of April, charged with burglary. The impression seems to be fully abroad in the community that his release from jail was directly connected with the making of these affidavits. The best and most law-abiding of our people are outspoken in their condemnation of this mode of prosecution, which bears all the ear marks of a fee-making arrangement."

I did not say that, but I stated that the press made that statement at that time.

Representative BURNETT. It seems from that record that the grand jury did not find a bill on the record?

Mr. HUNDLEY. I have stated in my testimony what the grand jury did. The grand jury after the testimony of Dixie White summoned all the parties at the game, and there was an indictment found.

Representative CRAIG. Did you not say that you were the only man who was in that game?

Mr. HUNDLEY. I said I was the only man who was prosecuted on the affidavit of Dixie White, who was in that game, and I say so yet. But I say all others in the game were summoned before the grand jury, and everybody connected with the game was then indicted. I said I was the only one prosecuted on the affidavit of Dixie White.

Representative RICHARDSON. That game took place prior to the time of the indictment, of course?

Mr. HUNDLEY. Yes.

Representative RICHARDSON. All these parties lived in Madison?

Mr. HUNDLEY. Yes.

Senator DILLINGHAM. I did not understand that that record was introduced as a charge against Judge Hundley, and when I notified Judge Hundley of the charges against him I omitted that. In fact, some of the gentlemen stated that they thought they did not intend to put it in as a charge against him.

Representative RICHARDSON. It was put in subsequently.

Representative CRAIG. That is one thing on which I based my objection.

Senator DILLINGHAM. You are the only one who did. And when I asked if the parties wanted that to appear as a charge, some one said "No."

Representative CRAIG. I did not hear that.

Senator DILLINGHAM. You based your objection on that?

Representative CRAIG. Yes.

Senator DILLINGHAM. But afterwards, when I asked about it, some one said "No."

Representative CRAIG. Then I was not here at the time, if that was done.

Senator DILLINGHAM. I did not notify Judge Hundley of this at all.

Representative CRAIG. Then, if that be the case, I will introduce that in rebuttal of what was introduced—in rebuttal of what has been put in by Judge Hundley himself, in which he said he was brought into this court and plead guilty, etc.

Senator KNOX. The way I look at it is this: Whether it was in the other day or not, it is now in. I do not think that the character of the prosecuting witness has anything to do with it. The fact is now that he admits he plead guilty. I do not see that you are accomplishing anything by going into this.

Representative RICHARDSON. In connection with that, however, do you not think that in an investigation of this kind the question of a man's character ought to figure prominently?

Senator KNOX. Undoubtedly.

Representative RICHARDSON. In connection with being a Federal judge for life?

Senator KNOX. So far as gambling is concerned, it has something to do with it. But I do not think it has anything to do with the question of the manner in which the thing was brought up and tried. In fact, the jury might make a mistake, but he plead guilty.

Representative RICHARDSON. The question that strikes me in connection with that, as Senator Knox has very clearly stated it, is that the question whether he plead guilty or was convicted is not material, but the question is as to the credibility of Mr. Hundley in connection with the transaction. Would a man be a man of acceptable character, and one who would denominate himself or be denominated by others worthy of filling the responsible position of Federal judge, whose credibility could not be relied upon?

Senator KNOX. Will you state in what respect you mean to attack his credibility in connection with this? We would like to get to a point that we can pass upon.

Representative RICHARDSON. When you read the papers fairly, as you will, I have no doubt, you will see that there can be no escape, and I take occasion to state here that we never have made a statement in a newspaper, directly or indirectly, in connection with this *transaction*, but throughout the whole of it has been injected the

idea that all this prosecution and all this resistance to Judge Hundley's confirmation is based upon my personal prejudice and personal animosity.

Senator KNOX. But Judge Hundley has just disavowed any idea of casting the slightest reflection on you.

Representative RICHARDSON. I understand that, and I am not surprised at his disclaiming it.

Senator KNOX. Nor am I.

Representative RICHARDSON. But I suppose I can show that, at different times and under different circumstances, through his father-in-law and others, that has been charged—the record is full of it.

Senator KNOX. Of course whatever the other Senators wish to hear I will sit and listen to, irrespective of the consideration of time.

Representative RICHARDSON. We do not wish to waste your time.

Representative CRAIG. I do not, for my part, either, wish to waste your time, but the question is as to the facts and goes to Judge Hundley's credibility. The testimony showed that Judge Hundley was not tried on an indictment. This shows that he was tried on an indictment.

Senator KNOX. Well, you have got that in.

Representative CRAIG. This shows, as I say, that he was tried——

Senator KNOX. My idea is that if what this record discloses contradicts anything he did or said in the past, you are entitled to the argument that the statements do not agree.

Representative CRAIG. That is all we ask.

Mr. HUNDLEY. I make the explanation that I was proceeding in an orderly way to answer every charge made against me, and this whole matter was injected into the case by Mr. Richardson, without opportunity to me to examine the record, and that I endeavored after twenty-seven years to give the best answer I could, as I recollected it, not having seen the papers for twenty-seven years. That is my answer. When was it filed?

Representative CRAIG. The 7th day of February, I think, was it not?

Senator DILLINGHAM. My idea was that that was not put in among the charges. As I understand it, Senator Culberson picked up the paper and laughed, and made some allusion to it, and finally some one suggested what it was, and it was passed along down the line, so that all knew what the paper was without having read it.

Mr. HUNDLEY. Yes, that is the paper.

Senator DILLINGHAM. I did not read it, but it was to the effect that some time or other you had been convicted of gaming.

Mr. HUNDLEY. Yes.

Senator DILLINGHAM. Later in the day I asked the question whether it was intended to make that charge, and someone said "No." I do not remember who it was, but I know it was understood by us, and when we talked about formulating the charges against Judge Hundley I did not include it.

Mr. HUNDLEY. I knew nothing about it.

Representative CRAIG. I remember that, but I was under the impression that this was a charge.

Senator DILLINGHAM. Later in the day you stated you had based your charge on those facts.

Representative CRAIG. Yes, sir; and I persisted in that.

Senator DILLINGHAM. I do not think we differ at all upon that point.

Representative CRAIG. No, sir.

Senator CLARKE, of Arkansas. My understanding is that this meeting was called for the purpose of allowing the gentlemen who are here resisting the confirmation of Judge Hundley to cross-examine him on the matters touched on in Judge Hundley's examination in chief; and if Judge Richardson is ready to proceed, I think the committee are ready to hear him.

Representative RICHARDSON. I am ready to proceed. [To Mr. Hundley.] You recited a conversation with your father at that time, and you say you promised him that you would not play any more cards?

Mr. HUNDLEY. Yes, sir.

Representative RICHARDSON. What was the promise you made to him about it?

Mr. HUNDLEY. I would like a ruling on this matter from the committee—whether you are willing to sit here and hear it, and whether I am to compare my professional and my private life with Judge Richardson, including the record in the Fennell will case. This is nothing more or less than to cause me to enter in an unjudicial way (and I do not want to enter) into a personal colloquy with Judge Richardson. I ask the committee whether we are to go into that matter as to whether I made a promise to my father and what I promised him?

Senator DILLINGHAM (to Representative Richardson). What is the point you wish to show?

Representative RICHARDSON. I stated very frankly to this full committee what my view was about this matter at the beginning, and that it was our wish to make it as brief as possible; that in any questions of phraseology I did not wear blue stockings about men who fought chickens, attended race tracks, or played cards, but that I did think that a man who did go in and play cards and then plead the gamblers' act afterwards, he would not be my idea of a man to fill a position such as that of Federal judge.

Senator CLARKE, of Arkansas. You can ask Judge Hundley about that.

Mr. HUNDLEY. I am willing to testify.

Representative RICHARDSON. You continued, then, to play cards?

Mr. HUNDLEY. Yes.

Representative RICHARDSON. Have you any number of due bills that are out for your losses at cards?

Mr. HUNDLEY. None on earth that I know of for losses at cards or anything else. I never owed a debt in my life that I did not pay. That is my answer.

Representative RICHARDSON. Did you lose any amount of money with a man by the name of Graham, a merchant in Montgomery—Graham or Mitchell?

Mr. HUNDLEY. Graham or Mitchell? I never played cards in my life with a man by the name of Graham or Mitchell, that I can recollect.

Representative RICHARDSON. Bob Loo lived in Madison County at the time?

Mr. HUNDLEY. Yes. I can not say how frequently I played. I do not play now, and have not for many years. I will say that.

Representative RICHARDSON. Your father-in-law, as a matter of course, has taken a very great interest in your confirmation?

Mr. HUNDLEY. Yes.

Representative RICHARDSON. He was there, was he not, or was brought up here as a witness?

Mr. HUNDLEY. No, sir; he was not.

Representative RICHARDSON. Did he not come to testify?

Mr. HUNDLEY. No.

Representative RICHARDSON. You have seen a communication to the public in connection with this subject printed in the papers of Birmingham, have you not?

Mr. HUNDLEY. Yes.

Representative CLAYTON. Your father-in-law was present here at this meeting?

Mr. HUNDLEY. He was not present in this room.

Representative CLAYTON. Was he not in the other room there with a witness?

Mr. HUNDLEY. Yes.

Representative RICHARDSON. You read the communication with the public in the Birmingham Age-Herald after returning to Birmingham, February 21?

Mr. HUNDLEY. I read it yesterday, I believe, for the first time.

Representative RICHARDSON. It was sent to you, was it not?

Mr. HUNDLEY. The paper was sent; yes.

Representative RICHARDSON. Who sent it to you?

Mr. HUNDLEY. My secretary sent it to me—clipped it and sent it to me.

Representative RICHARDSON. Sent you the paper on account of that communication?

Mr. HUNDLEY. No, sir; I gave him instructions to send me all clippings and mail that came to my office.

Representative RICHARDSON. I think it due the committee as well as myself that I should call Judge Hundley's attention to this statement of his father-in-law.

Senator CLARKE, of Arkansas. You might read it without putting it into the record.

Senator KNOX. Is your idea to hold him responsible for what his father-in-law said?

Representative RICHARDSON. No, sir.

Senator KNOX. What is the idea?

Representative RICHARDSON. To strengthen that very theory which I have just advanced to you that the defense he made outside of this committee and which his father-in-law made is based upon prejudice to me.

Senator KNOX. Is he responsible for this article?

Representative RICHARDSON. When you connect them so closely, and his father-in-law is so extremely active in getting petitions signed in the town—

Mr. HUNDLEY. My father-in-law is an Irishman, and I do not believe I could control him to save my life in anything; and if my father-in-law has made any inaccurate statement you may want me to contradict it.

Senator DILLINGHAM. We do not see, Judge Richardson, how Judge Hundley can be held responsible for what his father-in-law has said.

Representative RICHARDSON. Very well; I just wanted to read it. [To the witness:] Mr. Thompson was a witness, was he not—came up to Washington as a witness in your behalf?

Mr. HUNDLEY. Yes.

Representative RICHARDSON. He has gone?

Mr. HUNDLEY. Yes; he went back, and his sworn statement is on file in this case.

Representative RICHARDSON. I understand that. I am not asking about that. He went back and you stated that he went back to look after the business of the Southern Steel Company?

Mr. HUNDLEY. No, sir; that is not my statement.

Representative RICHARDSON. What was your statement?

Mr. HUNDLEY. That Mr. Thompson was one of the receivers of the Southern Steel Company, and that they have not yet made their final report, and that in addition to that he was collector of internal revenue, and that when he went away from here I told him to come back at the date set for the hearing, but instead he had sent me his affidavit stating the facts that I desired him to testify about. That is the substance of my testimony. I can not tell you the very words.

Representative RICHARDSON. You know the fact that since Mr. Thompson has been down there he has been very generally occupied in political conventions and so forth in the State.

Mr. HUNDLEY. I can not say.

Representative RICHARDSON. Do you know how many political conventions he has attended in Alabama since he left here?

Mr. HUNDLEY. No; I do not know. I have been in Washington all the time and could not know.

Representative RICHARDSON. You get the papers all the time, regularly, you stated?

Mr. HUNDLEY. Oh, yes.

Representative BURNETT. The statement was made by Senator Bacon, and he called Mr. Hundley to verify it—made it in Mr. Hundley's presence and in Mr. Thompson's presence—that if he went back he would have to come back here, because he would insist on his testifying before the committee.

Senator CLARKE, of Arkansas. That is true.

Representative BURNETT. And he did not come.

Representative RICHARDSON. That is true; he did not come. He is now engaged in holding political conventions.

Senator CLARKE, of Arkansas. But you can not hold Judge Hundley responsible for that unless Judge Hundley sent him down there to hold political conventions.

Representative RICHARDSON. You know that Mr. Thompson figures very largely in the matter.

Senator CLARKE, of Arkansas. We understand that. I am not intimating that you are not entitled to his personal presence, but the mere fact that he is holding political conventions would not prejudice Judge Hundley's confirmation. He may be very obnoxious to you down there, but the particular connection in which we are acting just now is another matter, not having anything to do with this point.

Representative RICHARDSON. He is the chairman of the Republican committee or one branch of the Republican committee in Alabama—Thompson is. He is also the political referee, and he is internal-revenue collector.

Mr. HUNDLEY. He is the chairman of the Republican executive committee. He is one of the political referees of the President, according to my recollection. I have not been in touch with political

matters since I have been on the bench, and I only give my understanding of it. He is one of the referees of the President there, as I say, as to post-offices and minor things of that kind which are referred to him. The other referee, I believe, is Mr. Minor Scott.

Representative RICHARDSON. Did you not act in some capacity as political referee in connection with Thompson?

Mr. HUNDLEY. I did not.

Representative RICHARDSON. Were you not consulted by Mr. Thompson?

Mr. HUNDLEY. I was about two years ago, before I went on the bench.

Representative RICHARDSON. On political appointments?

Mr. HUNDLEY. Yes; about appointments in my own town and the county in which I lived. Mr. Thompson would write to me about the character and standing of men in the town or county. To that extent only.

Representative RICHARDSON. How many times were you a candidate for public office in Madison County prior to 1896?

Mr. HUNDLEY. Well, I went over that the other day; but if the committee insists upon it, I will go over it again. I will repeat them all. I was elected to the lower house of the legislature twice; to the Senate twice. I was a candidate for Congress and was defeated.

Representative RICHARDSON. I limited it to 1896. Then I will ask you about the different times you sought Republican preferment. How many times before 1896 were you a candidate under the Democratic régime?

Mr. HUNDLEY. This is the same testimony I gave the other day, but if the committee wish I will repeat it.

Representative RICHARDSON. How many times have you changed your testimony in that respect?

Mr. HUNDLEY. I have not changed it all. I was elected twice to the legislature and I was elected twice to the Senate by unanimous vote of both the Democratic and Republican parties, without opposition, and I was appointed to an important position by Judge Thomas G. Jones, who was speaker of the house of representatives.

Senator DILLINGHAM. He limited it to 1896.

Mr. HUNDLEY. Particularly to that?

Senator DILLINGHAM. That is what I say.

Representative RICHARDSON. Subsequent to 1896, after joining the Republican party, how many times were you an applicant for office, and what offices?

Mr. HUNDLEY. I was an applicant for appointment as judge of the northern district of Alabama, with large indorsements of the bench and bar, at the time that Judge Jones was appointed, and, as detailed the other day, on the recommendation of Senator John T. Morgan, at the time that Mr. Rulack was appointed. I was then a candidate—Senator Knox doubtless has official knowledge of that, as he was Attorney-General—

Senator DILLINGHAM. For what position were you a candidate?

Mr. HUNDLEY. District attorney at the time the other attorney was removed and Judge Rulack was appointed to the office. Then I was nominated in 1906, I think it was, for United States district attorney. I was appointed in April, 1907, United States district judge.

Representative RICHARDSON. A great many of these indorsements that you received for the different positions coming down from 1891 are on file here?

Mr. HUNDLEY. I do not know whether they were filed or not. These were all filed in the Department of Justice. Some were filed with the President. I have not gone over them to see whether they were all filed or not. I made a brief of my indorsements.

Representative RICHARDSON. You did, though, present all the recommendations that were ever given to you for the different positions for which you applied—running back to 1891?

Mr. HUNDLEY. Yes, I did.

Representative RICHARDSON. During those several years you were a candidate for county offices as well as for the senate and house, you were pretty well acquainted with all of the officers of the county, were you not?

Mr. HUNDLEY. The officials of the county?

Representative RICHARDSON. Of Madison County; yes.

Mr. HUNDLEY. Yes, sir; of course I was, but I can not name them now.

Representative RICHARDSON. I did not ask you to do that at all. You frequently canvassed the county in behalf of your own candidacy?

Mr. HUNDLEY. Yes; I canvassed the county; I do not know how frequently.

Representative RICHARDSON. Every time you were a candidate you spoke? Were you pretty well acquainted with those in charge of the elections?

Mr. HUNDLEY. Some of them I knew, and some I did not.

Representative RICHARDSON. Well, for instance, you knew Jack Jama?

Mr. HUNDLEY. Yes.

Representative RICHARDSON. And you knew William M. High?

Mr. HUNDLEY. Yes, sir; I knew Mr. High.

Representative RICHARDSON. And Bill Chiddick?

Mr. HUNDLEY. I knew of Bill Chiddick. I did not know him as well as I did the others.

Representative RICHARDSON. You knew Doctor Hooper?

Mr. HUNDLEY. Yes, sir.

Representative RICHARDSON. You always called Doctor Hooper "Cousin Will?"

Mr. HUNDLEY. He is a very distant connection of mine.

Representative RICHARDSON. He is a man of good character and standing at Huntsville?

Mr. HUNDLEY. Well, I do not like to pass upon the character of other people. Doctor Hooper and myself have scarcely been on speaking terms for a long time. He was a tenant of my father's during his lifetime, and a tenant of mine, and I sued him for his rent, and we have never been on good terms, I think, since. You are now asking me to pass upon the character of other people, and I ask a ruling of the committee as to whether I must pass upon their character?

Senator CLARKE, of Arkansas. In what particular connection is this wanted?

Representative RICHARDSON. I hope to show the connection.

Senator CLARKE, of Arkansas. If you state it, we may see its application.

Representative RICHARDSON. I am not asking an idle question.

Mr. HUNDLEY. Unless the committee directs me, I decline to express my opinion of the character of other people, unless some affidavit is presented against me, and then I will state what I know of it.

Representative RICHARDSON. But during your candidacy for the different offices of Madison County you were on very close and intimate terms with Doctor Hooper?

Mr. HUNDLEY. Not during all my candidacies.

Representative RICHARDSON. Did he not live in a house that you owned?

Mr. HUNDLEY. I said he was my tenant, and I sued him for his rent.

Representative RICHARDSON. You do not say that your relations were not pleasant with him during your candidacies?

Senator CLARKE, of Arkansas. Judge Richardson, what are you coming to? We have certain definite charges here, and we are trying to see what they come to. Now, what does this come to?

Representative RICHARDSON. I am working on this record, and I am not going to occupy any more time. You have been very indulgent.

Senator CLARKE, of Arkansas. If we can see the bearing of this—

Representative RICHARDSON. I am going to disclose it to you.

Senator CLARKE, of Arkansas. I am disposed to give you the opportunity of bringing out everything that has the slightest bearing on the matter before the committee.

Representative RICHARDSON (to the witness). Did you not use this language, on page 297 of the record:

Will you permit me to tell you another reason why I wrote this letter?—

The R. P. Whitman letter.

Mr. HUNDLEY. I do not know, Judge Richardson.

Senator DILLINGHAM. You have not heard yet what he is going to read.

Representative RICHARDSON (reading):

It is because I stated in my communication to the convention that I believed they were not voicing the sentiment of the people who elected me, and I want to tell you that in the Huntsville precinct, where I live, which is in keeping with what Senator Morgan said, where I had formerly, as a Democrat, been elected to the senate by a majority of 180 or 200, I carried it on the face of the returns as a Republican by 47. It is the town in which Judge Richardson votes.

Mr. HUNDLEY. Lives—I may have said votes.

Representative RICHARDSON. You put in the Whitman letter because Whitman stated that when you were a candidate for Congress he counted 500 ballots against you.

Mr. HUNDLEY. I did not put it in for that reason, but for the reason that he was the secretary of the Democratic convention, who bore me the request for my resignation.

Representative RICHARDSON. Had any reference whatever been made in the proceedings of this committee about ballot-box stuffing until that letter was put in?

Mr. HUNDLEY. No, sir; I believe not.

Representative RICHARDSON. Did you aid or abet or contribute to any fund for the purpose of having yourself counted in as a Democratic candidate in the county?

Mr. HUNDLEY. What do you mean by "aiding and abetting?"

Representative RICHARDSON. Gaming, for instance—countenancing, aiding, and abetting, and recognizing it, and supporting it.

Mr. HUNDLEY. No, sir. I contributed to the campaign fund, as other candidates did, in that way on the Democratic platform—as you did.

Representative RICHARDSON. You do not know of your own knowledge anything whatever of unfair means or debauching of the ballot box to secure your election to the legislature—senate or house—at any time?

Mr. HUNDLEY. I have no personal knowledge; no, sir. I knew, as matter of common history, if you want to go into that.

Representative RICHARDSON. Well, you opened it.

Mr. HUNDLEY. I introduced that letter in answer to your statement. I knew, as matter of common history, and common knowledge among the people of the South, that elections were not fair. If you want to bring that up, I knew it had been charged against you, that when you were a candidate you had secured the appointment of men who were not fair. But I am not here to raise an issue of that sort, because I do not think it has anything to do with this matter. I ask the committee if I must go back to that time?

Representative RICHARDSON. Oh, yes, Judge; that relates to your character.

Senator KNOX. I should say that that is relevant.

Representative RICHARDSON. Yes. Did you not aid or abet or connive or contribute money?

Mr. HUNDLEY. I contributed as you did and other candidates to the Democratic campaign fund.

Representative RICHARDSON. I read this affidavit:

STATE OF ALABAMA, *Madison County*:

Before me, H. B. Roper, clerk of the circuit court, of Madison County, Ala., personally appeared W. P. Hooper, who is known to me, and who first being duly sworn deposeeth and saith: That he knows Oscar R. Hundley, and has known him for many years, and has served as an inspector at at least six or seven elections held in Madison County, Ala., at which said Hundley was a candidate, and that he was each time appointed at the request of said Hundley; that he never served as an inspector until after he had been spoken to by said Hundley, who was the first person who ever suggested to him that he act in that capacity. That whenever he so acted at the request of said Hundley that said Hundley would call him into his office and give him a large number of marked tickets, all of said tickets marked for said Hundley, but upon some of them the names of the other candidates upon the ticket with said Hundley would be left unmarked. That said Hundley would always request of the inspectors that they run him a little ahead of the ticket, using the marked ballots he had prepared for that purpose. That said Hundley would accompany his request, "Run me a little ahead of the ticket, boys," with the request that they call upon one Henry McDonnell, who was the chairman of the county committee, who would give them money, which was generally the sum of \$50 each. Said Hundley and said McDonnell were the men to whom the inspectors would report and from whom they would receive instructions as to the conduct of the election.

W. P. HOOPER.

Sworn to and subscribed before me this 21st day of February, 1908.

[SEAL.]

H. B. ROPER,
Clerk, Circuit Court.

Now, Judge, do you say before this subcommittee that you never took part or parcel or aided or abetted in ballot-box stuffing to aid your own election?

Mr. HUNDLEY. I state absolutely before this committee that the statements in that affidavit are absolutely and unqualifiedly false. When I was acquainted with this man I may have suggested his name for inspector—just as I might suggest others for inspectors—but I do say most positively that I never in my life paid one penny to an inspector of election, directly or indirectly, and that that statement of this man Hooper, with whom I have not been on speaking terms for years, and who was my tenant and whom I sued, and who fell out with me, and who took part against me and has written to Senator Johnston—I say that that affidavit is absolutely false so far as it refers to me.

Senator CLARKE, of Arkansas. He said he served as inspector at six or seven elections. At how many elections were you a candidate?

Mr. HUNDLEY. Four.

Senator CLARKE, of Arkansas. How many voting precincts are there in which votes are cast?

Mr. HUNDLEY. In the city of Huntsville?

Senator CLARKE, of Arkansas. Yes.

Mr. HUNDLEY. I do not think there is but one.

Senator CLARKE, of Arkansas. How many votes are polled there?

Mr. HUNDLEY. That varies. In those days when everybody voted I think there were 700 or 800 votes; it may be 900 or 1,000.

Senator CLARKE, of Arkansas. He says you gave him 600 or 700 ballots marked for you.

Mr. HUNDLEY. There were but 40 precincts in the county.

Senator CLARKE, of Arkansas. How many inspectors have you at a box in your State?

Mr. HUNDLEY. Three.

Senator CLARKE, of Arkansas. Could he have substituted tickets to the extent of 600 or 700 votes ahead of anybody?

Mr. HUNDLEY. No, sir; I do not think that could be.

Senator CLARKE, of Arkansas. What is Hooper's standing—his business or his income? What business does he follow?

Mr. HUNDLEY. I do not know that he follows any business. He was elected alderman recently in one of the wards.

Senator CLARKE, of Arkansas. What business did he follow when you knew him?

Mr. HUNDLEY. He had a farm.

Senator CLARKE, of Arkansas. Was he such a man as would stuff ballot boxes, or do you know him to be a better man than that?

Mr. HUNDLEY. I do not say that he would do it. I know this, Judge—that he was a sworn officer of the law—when he was an inspector, he was sworn to act honestly and fairly. I do not know whether he would stuff a ballot box or not. He might do so.

Senator CLARKE, of Arkansas. He did not do it at your instigation?

Mr. HUNDLEY. Absolutely no, sir; that statement is absolutely false.

Senator CLARKE, of Arkansas. You have clerks in your elections?

Mr. HUNDLEY. Yes, sir; three clerks. Two or three; I think three.

Senator CLARKE, of Arkansas. The election requires the cooperation of about five persons?

Mr. HUNDLEY. Yes; about five.

Representative RICHARDSON. Doctor Hooper was educated for a dentist, was he not?

Mr. HUNDLEY. Yes; about twenty or twenty-two or twenty-three years ago, I think he practiced dentistry.

Representative RICHARDSON. And they call him "Doctor?"

Mr. HUNDLEY. Yes.

Representative RICHARDSON. And he married the daughter of Tom McCauley, one of the most respected men in that community?

Mr. HUNDLEY. Yes, sir.

Representative RICHARDSON. And has lived happily with her?

Mr. HUNDLEY. How he has lived I do not know.

Representative RICHARDSON. That is common talk. That man McCauley stood as high as anybody in the county, did he not?

Mr. HUNDLEY. Yes, sir. That man has been dead forty or fifty years. You see, gentlemen, how this is going back a good way. He wants my opinion of people long since dead.

Representative RICHARDSON. You say you know Jack Jama?

Mr. HUNDLEY. Yes, sir.

If Hooper is a good citizen, I presume he acted fairly as a good citizen. If he did not act fairly, I should not think his affidavit would be worth much weight if he says that as an officer of the law he stuffed ballot boxes.

Representative RICHARDSON. Was it not public report and understanding that you were frequently counted in at the ballot box.

Mr. HUNDLEY. About the public report—what do you mean?

Representative RICHARDSON. When you were a candidate there and were elected to the house and senate, was it not public report and understanding that you were elected by fraud at the ballot box?

Mr. HUNDLEY. There were charges of that kind by my political opponents, but at one time I was elected by unanimous vote of both parties. There were charges of the character mentioned made then as they were made in all political contests in the South.

Senator KNOX. This affidavit does not say that this man either stuffed a ballot box or got the \$50, does it?

Senator CLARKE, of Arkansas. He probably intended to say so.

Senator KNOX. It is very carefully written. It does not say that he either stuffed the box or got the money.

Representative CLAYTON. But it does say that Mr. Hundley gave him tickets.

Senator CLARKE, of Arkansas. I want you to get the returns of the four elections in which you were a candidate.

Mr. HUNDLEY. All right.

Representative RICHARDSON. Doctor Hooper says:

That whenever he so acted at the request of said Hundley, that said Hundley would call him into his office and give him a large number of marked tickets, all of said tickets marked for said Hundley, but upon some of them the names of the other candidates upon the ticket with said Hundley would be left unmarked. That said Hundley would always request the inspectors that they run him a little ahead of the ticket, using the marked ballots he had prepared for that purpose. That said, Hundley would accompany his request, "Run me a little ahead of the ticket, boys," with the request that they call upon one Henry McDonnell, who was chairman of the county committee, who would give them money, which was generally the sum of \$50 each. Said Hundley and said McDonnell were the men to whom the inspectors would report, and from whom they received instructions as to the conduct of the election.

Senator CLARKE, of Arkansas. What kind of ballot did you have in Alabama about the time you were a candidate for the legislature and since; was it a ballot circulated on the outside by each party?

Mr. HUNDLEY. The last time was in 1894. I am not certain now, Senator, whether the official ballot was in vogue at the last election at which I was elected, but it was not for the first three elections. They were just tickets printed in the old way. I am not certain about the last—whether it was official or not.

Representative RICHARDSON. You knew Charlie Scott?

Mr. HUNDLEY. Charles H. Scott?

Representative RICHARDSON. Is that his name?

Mr. HUNDLEY. Yes, sir; I knew him.

Representative RICHARDSON. He is one of the political referees now in Alabama?

Mr. HUNDLEY. I do not know whether he is or not. Since I have been on the bench I have taken no part in political matters, and I really do not know.

Representative RICHARDSON. Well, before you went on the bench?

Mr. HUNDLEY. Yes, sir; he was.

Representative RICHARDSON. Do you know an attorney by the name of Parsons?

Mr. HUNDLEY. Which Parsons?

Representative RICHARDSON. I just ask you the question.

Mr. HUNDLEY. Well, there are several Parsons—three or four.

Representative RICHARDSON. In Birmingham?

Mr. HUNDLEY. Joe Parsons.

Representative RICHARDSON. Do you know him?

Mr. HUNDLEY. Yes; I know him casually.

Representative RICHARDSON. Do you know Charles J. Allison?

Mr. HUNDLEY. I do. He is clerk of my court.

Representative RICHARDSON. Appointed by Judge Jones?

Mr. HUNDLEY. No, sir. He was appointed by Judge Bruce and Judge Shelby.

Representative RICHARDSON. Appointed by Judge Shelby as judge of the circuit court of appeals. Allison came from Tennessee somewhere?

Mr. HUNDLEY. Yes; I think so. I do not know where he came from.

Representative RICHARDSON. And he is still clerk of the district?

Mr. HUNDLEY. The northern district of Alabama.

Representative RICHARDSON. Of both the circuit court and the district court?

Mr. HUNDLEY. Yes, sir.

Representative RICHARDSON. Have you promised to relieve him after you are confirmed, and put somebody else in his place?

Mr. HUNDLEY. No, sir; I have not. I have been approached time and again about that, and I have declined to say what I would do.

Representative RICHARDSON. You did not, then, at any time since your nomination by the President for judge of the United States district court for the northern district of Alabama agree with anyone to put Scott, the other political referee, in as clerk in the place of Allison?

Mr. HUNDLEY. Charles Scott?

Representative RICHARDSON. Yes.

Mr. HUNDLEY. At one time several months ago Mr. Scott was an applicant for the clerkship, and he and Mr. Thompson conferred about it. That was when I was first appointed, and thinking that I had a right—Thompson and Scott, when I was first appointed, sought me to appoint a clerk for my court—both of them were applicants for it, and when talking with them, I did at that time state that if I had a right to appoint a clerk, I would appoint Charles H. Scott.

Representative RICHARDSON. You would appoint Scott?

Mr. HUNDLEY. Hear me through. I will give a full history of it. Since then I have written Mr. Scott, or stated to him—I forget which—that inasmuch as he was taking such an active part in political matters I did not believe it would be proper to appoint him clerk of my court.

Representative RICHARDSON. Is it not a fact that Scott has been very active in political affairs in Alabama for years past?

Mr. HUNDLEY. I do not know how long. I have known him only for four or five years.

Representative RICHARDSON. Has he not been active as political referee?

Mr. HUNDLEY. For five years, sir; and I have written or told him that I would not appoint him.

Representative RICHARDSON. And you did make the promise relative to Allison, who is now clerk of the district, to relieve him and put Scott in?

Mr. HUNDLEY. You keep repeating the question, and I will repeat the answer.

Representative RICHARDSON. I ask you if you did not say that?

Mr. HUNDLEY. I repeat that, saying that after I was appointed judge there were various candidates for the office of clerk of my court, and I did say to Captain Scott at that time that I would appoint him clerk, but some time since I told him that on account of his activity in political matters, I would have to withdraw that promise.

Representative RICHARDSON. When was that notice given to Scott?

Mr. HUNDLEY. I think about two months or so ago.

Representative RICHARDSON. After these proceedings commenced about your confirmation?

Mr. HUNDLEY. No, sir; I think it was about two—two or three months ago. I do not remember the time. I have never stated that to anybody, but I stated that to him. I have never made any point on that.

And, another thing, there is a point about whether I had the right—

Representative RICHARDSON. I am not asking about that.

Mr. HUNDLEY. I know, but I am stating that.

Representative RICHARDSON. Allison has made a very efficient clerk, has he not?

Mr. HUNDLEY. He has made a very efficient clerk. Mr. Allison himself is not as efficient as some of his deputies, but he is efficient enough.

Representative RICHARDSON. There has been no complaint about him as clerk?

Mr. HUNDLEY. I have not heard of any.

Representative RICHARDSON. Scott came up here and was active for you?

Mr. HUNDLEY. He did not..

Representative RICHARDSON. He indorsed you and was active for you?

Mr. HUNDLEY. He indorsed me; yes.

Representative RICHARDSON. Did you not approach, directly or indirectly, Judge Shelby, one of the judges of the court of appeals of the fifth circuit, to get him to consent to allow you to remove Allison?

Mr. HUNDLEY. I will tell you the facts about that.

When Scott asked me to appoint him I requested him to see Judge Shelby and talk the matter over with him; that inasmuch as Judge Shelby was judge of the circuit court and had something to do with Allison's appointment, I would prefer him to get Judge Shelby's consent. He informed me that some friend of his, I think one of the Parsons, had seen Judge Shelby, but he did not do it at my request.

Representative RICHARDSON. Do you not know that Judge Shelby absolutely and unqualifiedly declined to have anything to do with such a transaction?

Mr. HUNDLEY. No.

Representative RICHARDSON. Were you not so advised?

Mr. HUNDLEY. No.

Representative RICHARDSON. Then why did you not go further and ask Judge Shelby, if you wanted to consult him?

Mr. HUNDLEY. Because I had a doubt whether I could appoint the clerk or not.

Representative RICHARDSON. Did you not have the same doubt when you sent some one to Judge Shelby?

Mr. HUNDLEY. I stated that if Judge Shelby would consent to it, I would willingly make the change.

Representative RICHARDSON. You were willing to make it yourself, provided Judge Shelby consented?

Mr. HUNDLEY. Yes. Judge Shelby had been instrumental in having Mr. Allison appointed.

Representative RICHARDSON. Do you think it right for a judge on the bench to be tinkering with such matters as that, connected with politics.

Mr. HUNDLEY. Judge Richardson, the appointment of an official by a judge of a court, the appointment of a clerk, is not a political matter. I think a judge of a district court, clothed by the law, has a right to appoint his clerk, that he has a right to go out among his friends and ascertain the best man he can get for the place. And further, inasmuch as Judge Shelby was a judge of the circuit court, it was a matter of judicial propriety for me to decline to make that change unless Judge Shelby consented to it. And I think I had a perfect right to discuss with Mr. Scott his candidacy for the place and to tell him that I would appoint him.

Representative RICHARDSON. Whom did you send to see Judge Shelby?

Mr. HUNDLEY. I did not send anybody.

Representative RICHARDSON. Who did go to see him?

Mr. HUNDLEY. I do not know. I told Mr. Scott that he must consult with Judge Shelby. I did not send anybody to him.

Senator DILLINGHAM. The committee does not see the importance of following up this any further.

Representative RICHARDSON. All right, Senator, I will stop. [To the witness:] You simply do not know whether Parsons went or not?

Mr. HUNDLEY. I do not. I never heard anything about it.

Representative RICHARDSON. That is all I want to ask, Mr. Chairman.

Representative BURNETT. If the committee desire to ask anything in regard to those matters mentioned by Judge Richardson, I will wait, but there is another branch of the question that I wish to ask about.

Senator DILLINGHAM. No. The committee do not wish to ask anything.

Representative BURNETT (to Mr. Hundley). You state in your decree that Mr. Thompson was a man of high character and that you had known him many years?

Mr. HUNDLEY. I think so.

Representative BURNETT. Do you think a man who will assault another from behind and strike him in the eye—

Senator KNOX. From behind? [Laughter.]

Representative BURNETT. Strike him from behind, I said, and strike him in the eye, and then boast of it while in his presence, is a man of high character?

Mr. HUNDLEY. That has all happened since I have been in Washington. You want me to express my opinion. I submit to the committee whether I should express my opinion?

Representative BURNETT. He said in his decree that he appointed a man of high character.

Mr. HUNDLEY. I did.

Senator KNOX. At that time that may have been all right, but this other matter occurred since.

Representative BURNETT. It is not for the purpose of injecting anything into this excepting as to the character of Mr. Thompson. If Judge Hundley has appointed a man of this character, it is a matter we want to know about.

Senator CLARKE, of Arkansas. But we would have to send for Mr. Thompson and the other man and hold a police court session.

Representative BURNETT. All I want is to have the statement of Thompson in reference to it.

Senator KNOX. He might have absolute knowledge of a man of high character at the time of an appointment to an office, and before sixty days elapsed he might do something he would not consider worthy of a man of high character.

Representative BURNETT. But a man who made such a boast—

Senator KNOX. But he had not done this at the time.

Representative BURNETT. As to the character of the man—

Senator KNOX. But Judge Hundley is only responsible for what he thought of the man at the time.

Representative BURNETT. But the presumption is that he would know, and did know, his character as mentioned. It was for the purpose of showing the character of the man—

Senator DILLINGHAM. I do not see that that is admissible.

Representative BURNETT. I want to show Thompson's own statement in regard to it. [To Mr. Hundley:] You stated in your decree that they issued receivers' certificates?

Mr. HUNDLEY. I think I did, Mr. Burnett.

Representative BURNETT. You stated that in a solemn decree that you rendered in this case?

Mr. HUNDLEY. I think I did; I will state why I did it.

Representative BURNETT. That is not true, is it?

Mr. HUNDLEY. I do not know whether it is or not. I stated, and I state here, that I signed a decree for the purpose of allowing them to issue receivers' certificates; that I received a letter from the bank who was to purchase these receivers' certificates requesting a certified copy of my decree, which I sent, and that my decree was written and based upon the records as they existed. As to whether or not they negotiated the receivers' certificates and got money on them I know nothing, but Colonel Bush in his testimony explains that the did not use the receivers' certificates, because they did not need them. But I did in fact authorize the issuing of receivers' certificates, and my decree was based on the facts thus on the record.

Representative BURNETT. You rendered a decree, then, on something you did not know anything about?

Mr. HUNDLEY. The record stated all about it.

Representative BURNETT. Let me read:

Those receivers immediately took charge of the property of the bankrupt.

Mr. HUNDLEY. Yes, sir; that is the time. That is the opinion.

Representative BURNETT. The opinion is followed by the decree. Your opinion is as sacred as a decree, is it not?

Mr. HUNDLEY. Certainly. But the opinion is the presentation of the views of the judge, while the decree is the act of the judge on the law and testimony.

Representative BURNETT. But in your statement of facts, is not your opinion entitled to as much credit as a decree would be?

Mr. HUNDLEY. Yes, sir; on the facts as they were before me at the time the opinion was written. I had authorized the issuance of the certificates, and I so stated in the decree. In fact, they were actually issued, but they were not used, as Colonel Bush says.

Representative BURNETT. You say that the decree was rendered, or the opinion, as you call it, was rendered upon the records that you had before you?

Mr. HUNDLEY. The records—I did not have them before me at the time I wrote the decree. I made the decree from the records that had been made in this case during the proceedings in the case; yes.

Representative BURNETT. Was there any record in it showing that they had sold receivers' certificates?

Mr. HUNDLEY. At that time, I do not know.

Representative BURNETT. When you rendered your decree?

Mr. HUNDLEY. I do not know whether they had sold them or not.

Representative BURNETT. Is it not a fact that there had not been a dollars' worth of receivers' certificates sold at the time you rendered your decree?

Mr. HUNDLEY. I only know about them from Colonel Bush's testimony. That is all I know about it.

Representative BURNETT. That is a fact, is it not; there was not?

Mr. HUNDLEY. I do not know what Colonel Bush's testimony was on that. My recollection is that he said he did not find it necessary to use the receivers' certificates. I can not keep all these points in my mind.

Representative BURNETT. Then there was no record that he had used them, was there, in your court?

Mr. HUNDLEY. There was no record that he had actually sold them, or at what price he sold them. There may have been some record about it, but I do not know of anything that I can call to mind now.

Representative BURNETT. You stated that you issued this decree on the records before you.

Mr. HUNDLEY. When I said "before me," I did not mean that I had them on the table.

Representative BURNETT. I did not mean that either.

Mr. HUNDLEY. I made it on the facts on the record in the case—that receivers' certificates were issued, and I may have stated (I do not remember now) that they were negotiated. That was my understanding at the time I made the decree. In my statement of facts in that respect, I may have been mistaken.

Representative BURNETT (reading):

These receivers immediately took charge of the property of the bankrupt and secured such funds on receivers' certificates necessary to keep the plants of the Southern Steel Company in operation, which they continued to do so long as the said operations proved profitable.

That is so, is it not?

Mr. HUNDLEY. That is my understanding and my opinion that they kept the plants running so long as they proved profitable.

Senator DILLINGHAM. You have stated that.

Mr. HUNDLEY. But he keeps asking me the question.

Representative BURNETT. There was no record in your court showing they had issued receivers' certificates?

Mr. HUNDLEY. Yes; that I had authorized the issuing of receivers' certificates.

Representative BURNETT. You see, gentlemen, that he does not answer the question. I asked whether there was any record in his court to show that they had issued receivers' certificates, and he goes on to say what he had authorized.

Mr. HUNDLEY. I have tried 500 cases since April, and I have tried to give you an answer the best I could. My recollection is that there were in fact issued these certificates, and that the bank which was to take receivers' certificates wrote to me and got a certified copy of the decree.

Senator KNOX (to Representative Burnett). What is the point you wish to make?

Representative BURNETT. The recklessness of the decree he made, here, that, upon the reading of it, proves to be an attempt simply to answer this charge.

Mr. HUNDLEY. The only question up before me at the time was whether this corporation should be adjudged bankrupt or not. In reading this decree you will find that it is an answer to this charge.

Senator KNOX. When was this decree made?

Representative BURNETT. Since this subcommittee was appointed.

Now, he has stated in the decree, which he calls an opinion (and he says that one is as solemn as the other), and he justifies himself for stating that receivers' certificates were issued or used. Now, then, I am trying to get him to the point that that is not true; that they were not. I am trying to get him to the point as to basing this decree on *the record before him*, and I am asking him now whether there were

any records in the court before him that there were any certificates issued.

Senator KNOX. I understand him to say that they were not used.

Representative BURNETT. Yes.

Senator KNOX. As matter of fact, they were issued.

Senator CLARKE, of Arkansas. He says they were issued but not used.

Representative BURNETT. Colonel Bush states positively that no receivers' certificates were ever issued or used:

These receivers immediately took charge of the property of the bankrupt and secured such funds on receivers' certificates necessary to keep the plants of the Southern Steel Company in operation.

I am asking him as to the truth of that.

Senator CLARKE, of Arkansas. Bush said that he had arranged for some \$16,000. Whether he had arranged it with the bank or not I do not know.

Mr. HUNDLEY. I will say, Mr. Burnett, that I had nothing to do with the management of the bankrupt corporation. That was done by the receivers. I only know what I did as judge.

Representative BURNETT. Then, why did you put that statement in that decree?

Mr. HUNDLEY. Because I had issued the certificates or authorized them to be issued, and because my information is that there were some issued.

Representative BURNETT. Who informed you that there had been an issue?

Mr. HUNDLEY. Well, I never got any direct information. My understanding was that of the common history of the case that those receivers' certificates were issued. I never asked anybody to inform me specifically whether they were issued, and I think that Colonel Bush's testimony was that \$16,000, or perhaps \$30,000, were issued, and, furthermore, there was something said about allowing those receivers' certificates to be pledged to pay freight or something of that sort. They may have been temporarily pledged for something of that sort. I do not know.

Representative BURNETT. Do you not know that they were not used for any purpose whatever?

Mr. HUNDLEY. No; I do not.

Representative BURNETT. Colonel Bush's testimony shows that they were not.

Mr. HUNDLEY. I do not remember.

Representative BURNETT. You stated in that decree that a joint bond was ordered?

Mr. HUNDLEY. Yes.

Representative BURNETT. Is it not true that the decree authorized these men to make a bond without saying that it should be a joint bond?

Mr. HUNDLEY. It meant, of course, a joint bond, and not a separate bond of \$100,000 each. That was discussed by Mr. Benners and was accepted by him, as the purpose of the decree, that it was a \$300,000 bond, to be a joint bond, and was sufficient. That was my construction of it, that it was to be a joint bond.

Representative BURNETT. It is not true that the decree did not say that?

Senator DILLINGHAM. Does not the decree show for itself?

Mr. HUNDLEY. Yes. That was the purpose of it, to make it a joint bond.

Senator DILLINGHAM. Can we not find that out by looking at the decree?

Representative BURNETT. Yes. And if he will answer my questions categorically, we will make more progress. I am asking him whether that is true or not.

Mr. HUNDLEY. Yes.

Senator KNOX. Do you not think that would, in law, mean a joint bond?

Representative BURNETT. I hardly think so.

Senator KNOX. That is my idea of it.

Mr. HUNDLEY. And that is mine.

Representative BURNETT. I do not know. Mr. Chandler was in the room at the time, was he?

Mr. HUNDLEY. I found Mr. Chandler there when I went to my office.

Representative BURNETT. And he stayed in there?

Mr. HUNDLEY. Yes, sir; ten or fifteen minutes, I think.

Representative BURNETT. Stayed in there with you?

Mr. HUNDLEY. Yes, sir.

Representative BURNETT. And he was one of the men you appointed receiver?

Mr. HUNDLEY. Yes, sir.

Representative BURNETT. When you requested the others to go, the others left; he did not leave?

Mr. HUNDLEY. I did not ask any of them to go.

Representative BURNETT. You stated that you would take the matter up?

Mr. HUNDLEY. Yes.

Representative BURNETT. Did not the receivers and attorneys file claims amounting to \$45,000?

Mr. HUNDLEY. No.

Representative BURNETT. There was no understanding or promise that that much would be right?

Mr. HUNDLEY. No.

Representative BURNETT. Nothing was said about it?

Mr. HUNDLEY. If they ever discussed it among themselves, they never discussed it with me.

Representative BURNETT. At the time these gentlemen were asking the appointment of receiver you said nothing about Chandler or Thompson either to Oberdorfer, or Hood, or Benners?

Mr. HUNDLEY. I do not think I did.

Representative BURNETT. You did not ask any of those creditors as to whether any of those men would be satisfactory or competent receivers?

Mr. HUNDLEY. No. I heard all that they had to say. I did not discuss with them the merits.

Representative BURNETT. You say you appointed Thompson because he had had some experience in commissary matters. Was not the man who was suggested by Mr. Chandler and Mr. Oberdorfer also a man of experience in that line?

Mr. HUNDLEY. My recollection is that they suggested a man by the name of Steiner.

Representative BURNETT. And a man by the name of Kittig, did they not?

Mr. HUNDLEY. I think when they suggested Steiner they made about the same suggestion, said about the same thing as Benners did, that Steiner would put up money. I do not remember now.

Representative BURNETT. But you did not appoint either of the men they suggested?

Mr. HUNDLEY. I did not.

Representative BURNETT. You say this question of collusion was talked of and thrashed out by the attorneys for the second petitioning creditors?

Mr. HUNDLEY. It was talked a great deal. The petition of the second petitioning creditors, which is on file, alleges collusion with the bankrupt, and the question that the bankrupt should not be permitted to suggest his own receiver was discussed to some extent.

Representative BURNETT. Before you?

Mr. HUNDLEY. Yes.

Representative BURNETT. And it was said that the Adlers were not in this collusion?

Mr. HUNDLEY. That was the averment in their petition, but Mr. Benners and Mr. Hood controverted that.

Representative BURNETT. But you thought that was collusion?

Mr. HUNDLEY. No, sir; I had not made up my mind about it. There had been no trial of the case. It appeared to me from the facts and the papers and the representations made to me that there might be collusion.

Representative BURNETT. Do you not state in your decree that this was one of the reasons why you refused to agree to appoint the two Adlers?

Mr. HUNDLEY. That is right, and the testimony shows conclusively that there was an effort to have the bankrupt name its own receiver. If that had been proven to me at the time of the original appointment, I should not even have appointed Edgar Adler.

Representative BURNETT. But that was called to your attention, was it not, at the time of the original petition?

Mr. HUNDLEY. Yes; but not particularly.

Representative BURNETT. But they stated it?

Mr. HUNDLEY. Yes.

Representative BURNETT. And you stated in your decree that that was one of the reasons why you did not appoint both of the Adlers?

Mr. HUNDLEY. Yes; why I did not appoint them both.

Representative BURNETT. Then you did appoint one of the men, who were in this collusion, as one of the receivers?

Mr. HUNDLEY. I did, because at that time it had not been proven to me that they were in collusion in the petition, and I thought it was nothing but proper—this man Adler was a competent man—to appoint one of them and to appoint a man I knew would see an honest administration of this estate.

Representative BURNETT. But you stated that that was one of the reasons why you did not appoint both of them?

Mr. HUNDLEY. I did, and I say it now.

Representative BURNETT. And you state that there was collusion enough to induce you to refuse to appoint both of them?

Mr. HUNDLEY. The reason I did not appoint both of them was that with the evidence before me, and the recommendation of Thompson and Chandler, and Mr. Kittig and Mr. Steiner, I deemed the proper and prudent thing to do to appoint one of the Adlers, and because it had been so strenuously denied that they were the choice of the bankrupts.

Representative BURNETT. But you did not observe his recommendation?

Mr. HUNDLEY. Nor the recommendation of the others. I had to do the best I could in the premises.

Representative BURNETT. It is a fact that Mr. Thompson has always until recently lived in the agricultural region and that he had no experience in this sort of business until this time. He never went about the works since he was appointed?

Mr. HUNDLEY. I do not know what he did. I was in Florida a good deal of the time.

Representative BURNETT. Is it not a fact that Chandler never went to the commissary's since he was appointed?

Mr. HUNDLEY. I have no knowledge about it.

Representative BURNETT. You never looked into the question as to whether he was doing his duty as receiver?

Mr. HUNDLEY. I only know that the receivers were appointed, and when the creditors got the opportunity they indorsed the appointment. I was not running the plant. I was not running it myself. I took it for granted that if the receivers were doing anything they ought not to do, objection would be made to it.

Representative BURNETT. No one filed a request for you to appoint Thompson and Chandler?

Mr. HUNDLEY. Yes; Frank S. White & Sons, representing creditors to a larger amount than Benners represented, requested it.

Representative BURNETT. Requested you by telephone?

Mr. HUNDLEY. Yes; and their letter states the fact.

Representative BURNETT. You told Hood and Benners that a bank with \$1,000,000 capital had told you they would finance this receivership, did you not?

Mr. HUNDLEY. I said it had been represented to me that some one had said that they would cash the receivers' certificates.

Representative BURNETT. Did you not tell them that the bank themselves had made the statement to you?

Mr. HUNDLEY. No; that the bank themselves had stated it?

Representative BURNETT. Yes.

Mr. HUNDLEY. No; I told them that I was informed that a bank with \$1,000,000 capital would cash the receivers' certificates.

Representative BURNETT. Now, what bank was that?

Mr. HUNDLEY. The American Savings and Trust Company. I said about \$1,000,000. That was information brought to me by some one. I do not remember who stated it.

Representative BURNETT. Who brought that information to you?

Mr. HUNDLEY. I can not tell you exactly. My recollection is, however, that Mr. Chandler brought it to me.

Representative BURNETT. You conferred with Mr. Chandler, then, *before the petitions were presented?*

Mr. HUNDLEY. No, sir; I conferred with him after these gentlemen left the office. I can not tell you the day that Mr. Chandler mentioned it.

Representative BURNETT. He mentioned it to you when you were alone?

Mr. HUNDLEY. I do not know whether he mentioned it then or on the street, or when I went on the bench. I could not tell the date or the place, but my recollection is that he stated that to me.

Representative BURNETT. At the second meeting Mr. Campbell was there, was he not?

Mr. HUNDLEY. Five days after?

Representative BURNETT. Yes.

Mr. HUNDLEY. Mr. E. K. Campbell?

Representative BURNETT. Yes.

Mr. HUNDLEY. Yes.

Representative BURNETT. At the second meeting you got hold of a telegram addressed to Mr. Benners by Mr. Adler?

Mr. HUNDLEY. Yes.

Representative BURNETT. And you kept that telegram in your office, and never to this day have delivered it to Mr. Benners, have you?

Mr. HUNDLEY. I explained fully to this committee that telegram happened to be opened by my secretary. I presume it is among some papers in Huntsville. I asked Mr. Benners if he wanted it when my attention was called to the fact that it was his telegram. My recollection is that he said he did not. I have heard nothing beyond that.

Representative BURNETT. Is that the time you said that the Adlers had been saying something insulting to the court?

Mr. HUNDLEY. It was not an insulting telegram; no.

Representative BURNETT. What were the contents of it?

Mr. HUNDLEY. It was from Mr. Morris Adler saying that he would not serve as receiver with anybody else except his brother Edgar. That convinced me, in connection with other things, that it would not be proper for me to appoint him.

Representative BURNETT. That convinced you, in connection with this telegram of Benners, that it would not be proper?

Mr. HUNDLEY. I did not know that it was addressed to Mr. Benners. I stated from the bench that my secretary had done it, and Mr. Benners expressed himself perfectly satisfied.

Representative BURNETT. Your secretary knew all the time?

Mr. HUNDLEY. He did not know that it was Mr. Benners's telegram.

Representative BURNETT. The matter was mentioned?

Mr. HUNDLEY. Yes, and he offered to get it for Mr. Benners after I explained it fully from the bench. He offered to get it, but Mr. Benners said it was not necessary.

Representative BURNETT. That was five days afterward?

Mr. HUNDLEY. Yes. I never saw it except the one time when my secretary read it while this matter was pending—while I was trying cases in court.

Representative BURNETT. You stated in your testimony, I believe, that Mr. Thompson and Mr. Chandler had arranged to borrow money. From whom had they arranged to borrow the money?

Mr. HUNDLEY. I do not know who it was—one of the banks in Birmingham, so they informed me.

Representative BURNETT. They did not tell you whom?

Mr. HUNDLEY. I think it was the First National Bank of Birmingham, of which Mr. Harding is president, the man who introduced the resolution indorsing the receivership. That is my recollection of it.

Representative BURNETT. And they said to you that the bank had declined to furnish the money on account of friction—that is, when the petition was made to remove Adler?

Mr. HUNDLEY. There never was any petition made to remove Adler.

Representative BURNETT. When the friction occurred?

Mr. HUNDLEY. That was the statement they made to me—that on account of friction they were unable to negotiate receivers' certificates. I think that was the time they told me. I think that was the bank, and also Mr. Crawford's bank, The American Trust and Savings Company.

Representative BURNETT. In your statement regarding what Mr. Benners said about the conversation between you and him some time afterwards, you said that Mr. Benners was mistaken in regard to the statement that you had asked him to indorse you, and told him that you were going to remain on the bench until at least March 4, 1909?

Mr. HUNDLEY. I say he was mistaken about it.

Representative BURNETT. You say that that is not true?

Mr. HUNDLEY. I say he was mistaken about it.

Representative BURNETT. That did not occur?

Mr. HUNDLEY. That did not occur. I stated what occurred.

Representative BURNETT. And all that occurred?

Mr. HUNDLEY. Yes. As nearly as I can recollect, that is all that passed between us. I do not pretend to quote word for word.

Representative BURNETT. You said something in your testimony, I believe, about Mr. Bush's statement that he could finance the operation. Is that the fact—had Mr. Bush told you—sent you word—that he could finance the receivership?

Mr. HUNDLEY. No, sir; I never made any such statement. I said he said he would do what he could to help them out.

Representative BURNETT. When he asked you to appoint him receiver?

Mr. HUNDLEY. Nobody asked me that.

Representative BURNETT. Nobody did?

Mr. HUNDLEY. No, sir.

Representative BURNETT. How came you to be told?

Mr. HUNDLEY. I called Mr. Bush up over the 'phone.

Representative BURNETT. What did he say to you?

Mr. HUNDLEY. I can not remember the words. In substance he he said that if he could be of any service if he were appointed receiver, he would be willing to help them out. Something of that kind.

Representative BURNETT. He told you that over the 'phone?

Mr. HUNDLEY. Yes; and so did Mr. Thompson say that.

Representative BURNETT. Mr. Thompson told you that Mr. Bush had said that also?

Mr. HUNDLEY. Yes.

Representative BURNETT. Who was it that filed the petition for Thompson and Adler?

Mr. HUNDLEY. E. K. Campbell—as I recollect—or Campbell & Thompson. The papers are the best evidence—they are in. I could not say whether they were signed by one of them or by the firm.

Senators KNOX and CLARKE, of Arkansas. The papers are in evidence.

Representative BURNETT. Then that is all, I believe. I was not aware that the papers were in evidence.

Senator DILLINGHAM. This concludes the hearing, then, I suppose?

Representative BURNETT. There was a statement made at the opening of the hearing that we could make a statement at any time.

Senator CLARKE, of Arkansas. Oh, yes—the Members. We stand by that—that you are at liberty to make a statement.

Mr. HUNDLEY. Will they make that now, while I am here?

Senator CLARKE, of Arkansas. Let them confer about it. You can step into the other room.

Mr. HUNDLEY. I would like to hear what they may present.

Representative BURNETT. You will be furnished with a copy.

(At this point Mr. Hundley withdrew from the room.)

Representative CLAYTON. We would like to assist the committee as much as possible. I have not been present at all the hearings. Judge Hundley has had opportunity of hearing all that occurred, and some of my associates have had, but I have not had opportunity, and I want to present to the committee a written statement of my views about it.

Senator CLARKE, of Arkansas. You can get that up this week, Mr. Clayton, can you not?

Representative CLAYTON. I doubt whether I can, Mr. Senator.

Senator CLARKE, of Arkansas. We have a stenographer here; you can come over and dictate it.

Representative CLAYTON. I have not had opportunity to look over the whole of the papers.

Senator CLARKE, of Arkansas. I see no impropriety in letting you examine all the papers, and suggest that that be done.

Representative CLAYTON. There were some confidential information given to me by a lawyer, for reasons that were satisfactory to him, as something affecting the fitness of Judge Hundley for this position, but it was given to me in a confident way, and I can not use that, and will not, unless I can get permission from this lawyer for me to use it. I am going to try to obtain that permission.

Senator CLARKE, of Arkansas. We wanted to make a final report on this case next Monday.

Representative CLAYTON. I will do what I can to expedite the matter.

Senator CLARKE, of Arkansas. We wish you to have a reasonable time. Any time you may want before Monday would probably be assented to by the committee.

Representative CLAYTON. I do not want the committee to delay on my account particularly. What I wanted to do, as much as anything else, was to aid the committee by giving our views about the whole case.

Senator CLARKE, of Arkansas. Very well.

Representative CLAYTON. And I think we can do it better by examining the testimony.

Senator CLARKE, of Arkansas. You can make a statement similar to what you made at first before the committee. Are you prepared to go on this evening? We could go on for half an hour.

Representative CLAYTON. No, sir; I am not prepared to go on this evening.

Senator CLARKE, of Arkansas. Suppose we should meet here Friday evening. There will probably be no session on Friday evening. Shall we say 2 o'clock?

Representative CLAYTON. Yes, that will suit me. We will do our best to be ready.

Senator CLARKE, of Arkansas. So that we may be ready to report to the Senate on Monday?

Representative CLAYTON. Very well.

Representative BURNETT. If the committee could do so, and it is within your rules, I would be glad if the committee would furnish us with a copy of the record.

Senator CLARKE, of Arkansas. With the understanding, of course, that it is not public property?

Representative BURNETT. Of course.

Representative CLAYTON. Of course. We shall treat a matter of that sort with strictest confidence.

Senator DILLINGHAM. That should be done.

Senator CLARKE, of Arkansas. You can have my copy.

Representative BURNETT. I have had Mr. Kittredge's copy during the little time that I have had access to any, and if I can have an opportunity of examining that, that will do me.

Senator CLARKE, of Arkansas. And you can bring it back.

Representative BURNETT. Certainly.

Representative RICHARDSON. There was a suggestion made this morning, and I wanted to hear from the committee whether they wanted any further proof on the matter—it strikes me as important—that effort to have Scott, a referee, appointed clerk instead of Allison.

Senator CLARKE, of Arkansas. My understanding is that the district judge has the right to appoint his own clerk—to appoint whom he pleases in that capacity.

Representative CLAYTON. If you will permit me to speak in reference to this matter, perhaps I am a little more familiar with it than Judge Richardson is, and perhaps the Senators are not familiar with it.

Judge Jones holds that the law which made him judge of the northern and middle districts of Alabama has not been repealed, and that he is still judge of the northern and middle districts, and that Judge Hundley is in the nature of an additional judge, and that he, Hundley, has therefore not the right to make the appointment. But it is in such form that the judges of the circuit court of appeals have coincided with Judge Jones in that view, though it is not in such way that I can use it. In corroboration of that the Department of Justice has prepared a bill legislating Judge Jones entirely out of the northern district of Alabama and confining him to the middle district. That bill was introduced in the House at this session. So that it seems that Judge Jones as well as the Department of Justice hold that Mr. Hundley has not the right to make those appointments.

Senator DILLINGHAM. What is the point of this matter, at any rate?

Representative RICHARDSON. Judge Hundley stated in the presence of the committee that he had agreed to do that, and that he took it back.

Senator DILLINGHAM. What is the object of this?

Representative RICHARDSON. To show that it was a political transaction and that he intended to appoint the political referee.

Senator DILLINGHAM. Has he not shown that he intended to do that?

Representative RICHARDSON. I think I can show by Judge Shelby that he was opposed to that, and refused to coincide in such a thing.

Senator KNOX. But Judge Hundley said that he would not do it when he heard that Judge Shelby was opposed to it.

Representative RICHARDSON. He said that it was withdrawn after Judge Shelby had disapproved it. In addition to that there is the fact that the evidence is that he would have trusted these sacred matters with the political referee.

Senator DILLINGHAM. I do not know that you understand me, but it seems to me that if that is your object you have gone to the limit now, in his own admission that he intended to do it.

Representative CLAYTON. I think I catch your views. I think we agree in the main. The object is to show as a part of the evidence establishing his unfitness to be a judge that he will reward his political friends, and he will, we might say, punish his enemies—as we might say that a man who would go to that extent might punish his enemies.

Senator DILLINGHAM. But what further proof on that point do you propose to offer? We all know that Mr. Scott is——

Representative CLAYTON. I do not propose to offer any further proof.

Representative RICHARDSON. I would offer proof that Judge Shelby would not touch the matter.

Senator DILLINGHAM. To my mind that would not strengthen your proposition to any extent.

Representative CLAYTON. You think we have already all that is needed?

Senator DILLINGHAM. It seems so to me. I do not know how it strikes Mr. Clarke.

Senator CLARKE, of Arkansas. I understand perfectly that Scott approached him seeking the appointment, and he agreed to give it to him. But he said that he did not see his way to removing Allison until he heard from Judge Shelby, as he was the judge's appointee.

Senator DILLINGHAM. Of course, this is a case that has gone on so far as to become almost burdensome to us who have so much to do. I do not know how you can strengthen your case in the matter.

Representative CLAYTON. I am sure the committee has been most patient.

Senator CLARKE, of Arkansas. We have nothing to do now but to hear you gentlemen on Friday. If you can write out your matter in the meantime it will save us the trouble of coming here.

Senator DILLINGHAM. I think you would all, perhaps, express yourselves more clearly and tersely if you did so on paper in advance.

Representatives CLAYTON and RICHARDSON. Yes.

Representative RICHARDSON. And especially if we could all join in the same statement.

Senator DILLINGHAM. Yes.

Representative CLAYTON. I wish to say that I am doing this entirely from patriotic and pro bono publico motives. I have something else to do, and when I am allowed to discharge those other duties I shall be perfectly easy about it, no matter what the result may be.

Senator CLARKE, of Arkansas. Then we will meet here at 2 o'clock on Friday next?

Representative CLAYTON. Very well. I will say in this connection, in reply to Judge Hundley, that I have no objection whatever to his seeing or hearing what I say. I want him to hear it.

Representative BURNETT. We are all of the same mind in that respect.

Senator KNOX. You have no objection to the judge hearing a good speech?

Representative CLAYTON. Well, I have no object to serve except the public interest.

(Thereupon the subcommittee adjourned to Friday next, February 28, 1908, at 2 o'clock p. m.)

Further successive adjournments were made until March 21, 1908.)

WASHINGTON, D. C., *March 21, 1908.*

The subcommittee met on the call of the chairman. Present: Senators Dillingham (chairman), Knox, Bacon, and Clarke, of Arkansas.

Hon. H. D. Clayton, Member of Congress, Alabama, read the following paper:

Senators, by your courteous invitation we appear before you and now present our testimony and reasons for our opposition to the confirmation of Oscar R. Hundley, nominated by the President for the office of judge of the northern judicial district of Alabama.

We, the undersigned six Representatives in the Congress from the State of Alabama, respectfully appeal to you, as a part of the appointing power under the Constitution, not to put this man in this high, responsible, and lifetime position over a large part of the people of our State.

We know that you are patient to hear and will give careful consideration, and in the end will be actuated by the lofty desire to best determine for the public good.

If this were some minor appointment, to fill some place merely political or executive in nature, where the official tenure is short, we might not, perhaps, consider the case grave enough to urge upon you our solemn protest. We beg to say that the office of judge stands on a higher plane than that occupied by any executive agent. And in order to be just to the President we must be permitted to say that we do not believe he was fully and correctly informed as to the character and qualifications of this man; and also that if he had been so informed we do not believe he would have sent this nomination to you. We are confident that should it appear to you that the President has made a mistake in this case, as the Senate in some other infrequent instances seemed to have found, you will reject this nomination. It is therefore to you, as a part of the appointing power, that we must, under our sense of public duty, appeal to prevent an unfit and unworthy man from being clothed with authority over the people that we have the honor to represent.

We each, respectively, and upon our respective responsibility, state that by qualification and character Oscar R. Hundley is not fit and worthy to be judge of the northern judicial district of Alabama. He is not of the material out of which an upright and just judge can and must be made. His life, his character, and his conduct sustain this statement.

For the purpose of making ourselves the better understood, you will permit us to say that the rule by which you are guided in the consideration of this nomination is not like that narrower rule which governs the Senate when sitting as a court of impeachment; nor is this case analogous to one where the defendant is under indictment for crime, for there the charge must be specific and confined to the violation of some positive law, and the evidence to warrant an adverse finding must be so convincing as to show beyond a reasonable doubt that an offense denounced by law has been committed by the defendant. The question here is not so much what particular acts this man may have committed, but, rather, the question is whether he is fit and worthy to be a United States judge. His sins of commission and omission or his conduct may furnish the means to ascertain whether he is fit and worthy or unfit and unworthy to be judge. His acts and his conduct serve to demonstrate his character. It is his character and the question of his fitness and worth that, we apprehend, concerns you.

We shall not discuss burden and measure of proof after the manner pursued in criminal courts. We take it that the question you will determine is, Has it been made manifest that this man is suitable for the high position of authority and responsibility for which he has been nominated? We believe that should you conclude that he is not, or that it has not been made to appear that he is fit, and worthy, you will reject the nomination. It is because of our high estimate of what the Senate is in legal contemplation and in fact that we say you are dealing with a matter of far greater public concern and fraught with much graver consequences than the verdict of a petit jury in any possible given case. Of course you will not be guided by mere technicalities or quibbles that sometimes shield criminals from punishment. In your enlightened consciences, we doubt not that you will impartially determine between the public interests and Oscar R. Hundley, and decide whether or not he is a suitable man to be made judge over our people and the vast property interests situated in the great industrial region of Alabama.

To some of his acts, doings, and conduct we invite your attention.

First. With regard to our contention that Judge Hundley does not possess that degree of integrity and desire for fair dealing which should characterize a judge, we call attention to his testimony relating to his conviction in the county court of Madison County, Ala., on a charge of gaming. It is for the sole purpose of showing Judge Hundley's untruthfulness as evidenced by his testimony that we invite attention to this matter. When asked by Mr. Craig (p. 308 of Hearings), "Were you tried by a jury?" Judge Hundley answered: "No, sir; by the judge, but I was guilty." Now, the certified copy of the record of the conviction shows that he, Hundley, was tried by a jury and that the jury was accorded to him on his demand.

On page 308 of the Hearing Mr. Craig asked the following question: "You plead guilty?" to which Judge Hundley answered, "I did,

because the solicitor said he would convict me if he had to go on the stand himself."

As against this statement by Judge Hundley we place the certified copy of the record, which shows that a plea of not guilty was entered by the defendant, Hundley, and not only that, but that after he had been convicted he took an appeal to the supreme court of Alabama.

On pages 308 and 309 of the record Judge Hundley states that he was tried upon an affidavit made by a negro thief named Dixie White. We call attention to the certified copy of the record, which shows that he was regularly indicted by the grand jury of Madison County, and on the testimony of George L. Davis.

Judge Hundley seeks to make it appear by his testimony that he was being persecuted in the matter of that trial by the solicitor, named Nicholas Davis, and his brother, and states that, although there were a number of men in the game in which he played, he was the only one prosecuted. But after Judge Hundley was confronted with the record of the indictment against him, and evidently fearing that he would be confronted with records of indictments against the other men who were in the game, he reversed himself, and declared that all parties who played in Mr. Davis's office were summoned as witnesses before the grand jury against all the parties who were in that office and in the game, and that indictments were found against all these parties.

We call attention to the fact that Judge Hundley said he was prosecuted by a solicitor named Nicholas Davis, while the record shows that in truth and in fact the solicitor who appeared against him was Henry C. Jones.

In answer to the possible contention that Judge Hundley was not notified of this charge of conviction before he first testified as a witness, we beg to say that the record of the conviction was filed with the committee on February 7, 1908, and that Judge Hundley in his voluntary statement in his own behalf on February 14, 1908, admits that he knew such record was on file, for he then stated that "I understand that it is filed here."

Second. The uncontradicted facts in one branch of the case are that prior to 1896 Mr. Hundley had been elected as a Democrat and had served two terms of two years each in the house of representatives of the Alabama legislature and two terms of four years each in the Alabama State senate, in all twelve years.

We admit that Mr. Hundley had a right to change his political faith and as often as he liked. However much he may have boxed the political compass, we have no criticism to offer on that account. But the evidence shows that Mr. Hundley was elected a Democratic senator in 1892 and that his term of office expired in 1897, and that in the fall of 1896 he took his seat in the Alabama State senate, and while such senator, and at that time, he attended the caucuses of the Republican party and affiliated with that party. After he had abandoned the Democratic party and while still holding the office of senator, conferred upon him by the Democratic party, a Democratic convention, representing every precinct in Madison County (his senatorial district), by formal resolution demanded that he resign the office of senator, but this he refused to do. (Record, p. 287).^a We

^a Page references are to the stenographer's typewritten record, the matter not being in print at the time of this presentation.

mention these facts as being significant of Judge Hundley's character and persuasive of his lack of a proper sense of integrity. We do not hesitate to assert that no honorable man of any political party would feel himself justified or excused should he act with his former political opponents while still holding the commission of his former political party.

In this connection we beg leave to quote from the written report prepared by Senator Pettus, now deceased, for himself and another member of the subcommittee of three appointed by the Committee on the Judiciary of the Senate, near the close of the Fifty-ninth Congress, on the nomination of Oscar R. Hundley for the office of district attorney for the northern district of Alabama:

Your committee begs leave, after having presented Mr. Hundley's record, as contained in Alabama senate journals, to submit to the Senate facts or charges of a personal character, filed for several weeks in this case, giving Mr. Hundley full opportunity to deny the same. An editorial on December the 8th printed in the Daily Tribune, at Huntsville, Ala., where Mr. Hundley resides, a Republican paper and for many years the official organ of the Republican party of Alabama, headed, "A plain sell out," charging Mr. Hundley with conduct wholly unbecoming a gentleman, or a good citizen. Your committee, while not disposed to attach any considerable importance to a newspaper article, feels constrained when the matter referred to in the newspaper editorial is reiterated denounces corruption by leading Republicans claiming to be cognizant of the fact. We attach as exhibit D the editorial referred to in the Daily Tribune; and a letter of Hon. Charles P. Laffé, the editor of the Daily Tribune; * * *; and the letter of Hon. Asa E. Stratton, addressed to Hon. Edmund W. Pettus, of date of January 8, 1907. * * * These charges are reiterated in other letters attached to said exhibit. It appears to your committee that such charges coming from a newspaper in a man's own town, as well as from others knowing Mr. Hundley, and being of such a grave character, involving the integrity, character, and truth of a man, are entitled to some notice, or answer, or explanation. And especially if he is asking to be appointed to high and responsible Federal office.

These charges referred to Mr. Hundley's conduct when he was a candidate in 1896 for the Republican nomination for Congress from the Eighth Alabama district. There have been introduced in evidence every indorsement or recommendation that Mr. Hundley received for the different Federal positions to which he aspired from 1891 to 1907, when he received the nomination for judge of the northern judicial district of Alabama, and all indorsements have been filed by him in support of his pending case for confirmation. (Record, p. 586.)

Third. The evidence discloses the fact that Judge Hundley was guilty of conduct inconsistent with judicial propriety and integrity when he permitted or countenanced the petition for his confirmation by the Senate to be circulated by his father-in-law, Mr. Frank P. O'Brien, of Birmingham, Ala., at Birmingham among the lawyers of that bar while his (Hundley's) court was in session and he presiding on the bench, which petition was presented to and in the presence of lawyers who had cases pending before Judge Hundley that he, as such judge, had to pass upon or try. Judge Hundley knew that his confirmation was being opposed, and yet he admits that he knew his father-in-law was circulating this petition and securing the signatures of lawyers who had cases before his court. We submit that this conduct was not in keeping with that of an upright judge.

Fourth. That Judge Hundley used his high office unworthily and to repay his political obligations and to collect a moneyed demand due to him we think the facts of this record fully establish. It is admitted that J. Q. Thompson and Charles H. Scott were and are the

political referees of the present administration in Alabama. Mr. Thompson is chairman of one wing of the Republican State executive committee, and the internal-revenue collector at Birmingham, and that both he and Scott were the active supporters of Mr. Hundley for the appointment of judge and, later, of his confirmation. The record shows that Mr. Hundley before he was nominated for judge was consulted about political appointments in Alabama by Mr. Thompson. (Record, pp. 584-585.)

The evidence further shows that on May 17, 1906, said Joseph O. Thompson executed to said Hundley a mortgage in the sum of \$4,500, which was recorded in Lowndes County, Ala. While testifying for himself Judge Hundley's attention was called to this and practically the only explanation he made was that he loaned the money in ordinary course of business. The fact that this money was loaned by Judge Hundley to Mr. Thompson, taken with the several candidacies of the judge since 1901, is a luminous fact in the case, and shows, we believe, that Judge Hundley, for improper and ulterior motives, put Thompson under financial obligations to him and thereby did become careless of his character and reputation and was, as we believe, thereby influenced to appoint Thompson a receiver in the Southern Steel Company case.

Fifth. Judge Hundley admits that Charles H. Scott, the other political referee, and Thompson conferred with him, after he had been nominated for and was acting as judge, about his appointing Scott the clerk of his court, and about his removing, for that purpose, Charles J. Allison, whom he, Judge Hundley, admits was a worthy and efficient clerk. (Record, p. 599-) Judge Hundley claims in explanation of this bargain, for we believe that we are justified in so calling it, that he notified Scott that he could not carry out his promise because Scott was too active in political matters. The record shows that Scott for a number of years prior to Hundley's appointment or nomination as judge had been active in politics, and that since Judge Hundley was first appointed Scott has been no more active in politics than he had been before such appointment. From the judge's own testimony the fact appears that if he gave notice to Scott at all it was after the appointment of this subcommittee to investigate and report upon Hundley's nomination. Further, in regard to his promise to have Charles H. Scott, one of the political referees, made clerk of his court at Birmingham, we have to say that he never changed his mind on the subject, or never decided not to appoint Scott to such office until after it had been ascertained by him, as a result of a controversy in the district between himself and Judge Thomas G. Jones over the appointment of a referee in bankruptcy, that Judge Jones, in the opinion of other eminent judges and in the opinion, we believe, of the Department of Justice, had not been ousted of his jurisdiction in the northern district of Alabama, and not until after Judge Hundley had ascertained that he did not have authority to remove Allison and appoint Scott clerk.

We beg to call attention to certain facts. On February 25, 1907, the act of Congress was passed providing for a district judge for the northern judicial district of Alabama. But this act does not expressly or by implication oust Judge Jones of jurisdiction in the northern district of Alabama. It will be remembered that under a former act of Congress the judge of the middle judicial district of Alabama was

made judge of or designated as judge of the northern judicial district of Alabama. The act under which Judge Hundley was appointed, in its nature, as we believe, provided for the appointment of another judge, and did not and does not deprive Judge Jones of jurisdiction in the northern district. In corroboration of this we call attention to the fact that, at the instance of the Department of Justice, Representative Jenkins introduced H. R. 419 on the 2d day of December, 1907, designed to give Judge Hundley exclusive jurisdiction in the northern district of Alabama. From this we believe we are justified in concluding that Judge Hundley's statement before this committee was disingenuous and false, lacking in frankness, and was in its nature a suppression of truth. We believe we are warranted, from the testimony and the circumstances in the case, in saying that he failed to remove Allison as clerk of the court and failed to appoint his political friend and promoter because he, Judge Hundley, had ascertained that he did not have the authority to remove the one and to appoint the other.

Sixth. We think it is just to say that Judge Hundley posed before the subcommittee as being particularly virtuous and conscientious in election matters, and to this end he voluntarily presented a letter from one R. P. Whitman, who stated that when Hundley was the Republican candidate for Congress from the eighth district of Alabama in 1896 (Joseph Wheeler being the Democratic candidate) that he, Whitman, changed certain ballots cast for Hundley for ballots for his Democratic opponent. (Record, pp. 293, 589.) No reference had been made to ballot-box stuffing until this letter was presented by Hundley. (Record, p. 590.) The letter was not called for by any question propounded to Mr. Hundley, and it was a confidential letter to Mr. Hundley from a man supposed to be on his death-bed, and had no part in this hearing.

We quote from the record:

Representative RICHARDSON. Had any reference whatever been made in the proceedings of this committee about ballot-box stuffing until that (Whitman) letter was put in?

Mr. HUNDLEY. No, sir; I believe not.

The affidavit of Mr. Hooper, a reputable citizen of Huntsville, Ala., where Mr. Hundley resided all of his life until he was appointed judge, bears directly on Judge Hundley's efforts to corrupt the ballot box.

STATE OF ALABAMA, Madison County:

Before me, H. B. Roper, clerk of the circuit court of Madison County, Ala., personally appeared W. P. Hooper, who is known to me and who, first being duly sworn, deposeth and sayeth: That he knows Oscar R. Hundley and has known him for many years, and has served as an inspector at at least six or seven elections held in Madison County, at which said Hundley was a candidate, and that he was each time appointed at the request of said Hundley, and that he had never served as an inspector until after he had been spoken to by said Hundley, who was the first person who ever suggested to him that he act in that capacity. That whenever he so acted at the request of said Hundley, that said Hundley would call him to his office and give him a large number of marked tickets, all of said tickets marked for said Hundley, but upon some of them the names of other candidates upon the ticket with said Hundley would be left unmarked. That said Hundley would always request of the inspectors that they run him a little ahead of the ticket, using the marked ballots he had prepared for that purpose. That said Hundley would accompany his request, "Run me a little ahead of the ticket, boys," with the request that they call on one Henry McDonnell, who was the chairman of the county committee, who would give them money, which was

generally the sum of \$50 each. Said Hundley and said McDonnell were the men to whom the inspectors would report and from whom they would receive instructions as to the conduct of the election.

W. P. HOOPER.

Sworn to and subscribed before me this 21st day of February, 1908.

[SEAL.]

H. B. ROPER,
Clerk Circuit Court.

The hypocrisy that is uncovered in the effort to hold himself out at this time as a model of purity and honesty is in consonance with Judge Hundley's character for duplicity and deceit. "In the Senate I introduced and urged the passage of a law to secure a free and untrammelled expression of the popular will at the ballot box." (Hundley's letter, record, p. 291.) The affidavit of Mr. Hooper speaks for itself. It is true that Judge Hundley denied the statement of Hooper's affidavit. What else could he do but that? A request was made of the chairman of the subcommittee to issue process for Mr. Hooper to appear before the subcommittee and give evidence, but that request was not granted. We point to another feature of the evidence that shows the reckless disregard Judge Hundley has of the truth. Mr. Hundley objected to the introduction of this evidence. (Record, p. 591.) We quote from the record:

Representative RICHARDSON. Well, you opened it.

Mr. HUNDLEY. But I am not here to raise an issue of that sort, because I do not think it has anything to do with this matter. I ask the committee if I must go back to that time?

Representative RICHARDSON. Oh, yes, Judge, that relates to your character.

Senator KNOX. I should say that that is relevant.

Seventh. The evidence shows that Mr. Hundley abandoned the Democratic party in 1896, and joined the Republican party while he still held a Democratic commission as State senator. He was a candidate for Congress before the Republican Congressional district convention that met at Decatur, Ala., in the fall of 1896 before the Presidential election in November, 1896. It was on account of his conduct at this convention after his nomination that leading Republicans so vigorously denounced him for dishonesty and perfidy.

In his letter to the Democratic convention of Madison County declining to accede to their demand that he resign his seat as State senator, Mr. Hundley says: "Your action is a fit companion piece to the declaration of your candidate for President, that 'he would die before he would support a Democratic candidate on a gold platform.'" (Record, p. 290.) In a letter written by Mr. Hundley and published in the *Progressive Age*, a newspaper published at Scottsboro, Ala., a few months before that date, Mr. Hundley says: "I will state that I am in favor of the free and unlimited coinage of silver at the ratio of 16 to 1." (Record, p. 299.)

Eighth. Mr. Hundley's joint resolution to amend the constitution of Alabama to provide a special tax to be levied for school purposes constitutes a striking episode in his life.

We refer to Judge Hundley's record in this particular matter while he was a member of the Alabama legislature regarding this joint resolution to so amend the constitution of Alabama that the special taxes to be collected from the white people should be used for the education of the children of the white race and the taxes collected from the *people of the black race* should be used for the education of the chil-

dren of the black race, solely to show that he has prevaricated or contradicted himself and has failed to tell the truth about this matter.

In referring to this joint resolution we quote:

Mr. HUNDLEY. I introduced in 1890-91 with the word "shall."

Senator BACON. And you again introduced it when?

Mr. HUNDLEY. In 1892-93.

Senator BACON. Each time with the word "shall." (Record, page 275.)

We find a pamphlet written by Mr. Hundley addressed to Hon. Clarence D. Clarke, chairman, Washington, January 16, 1907, defending himself against the charge of favoring a joint resolution requiring that taxes paid by the negro population should alone be used for the education of the negro children, etc. Mr. Hundley says: "It will be found by turning to page 177 of the House Journal of 1888-89 that when, on the 30th day of November, 1888, this bill was put on its passage, Hon. Francis L. Pettus (son of Senator E. W. Pettus), offered and secured the adoption of the following amendment: 'Add to the end of section 1, the following: *Provided*, That the money collected from persons of the white race shall be applied exclusively to the education of the children of the white race and the money collected from persons of the black race shall be applied exclusively to the education of children of the black race.' The amendment was adopted, and the bill as thus amended passed the House and was sent to the Senate. I followed it to the Senate and had this amendment stricken from the bill, and the bill was defeated at that session in the Senate." And yet, in this hearing Mr. Hundley testified that he introduced that joint resolution four times, each time requiring that the funds for education "shall" be applied as provided in the Pettus proviso. (Record, page 275.)

Senator BACON. Was it introduced four times?

Mr. HUNDLEY. Yes, sir; I think it was introduced four times.

The late Senator Pettus, in the report that he made on this question, says: "Exhibit A also contains a copy of the joint resolution referred to by Mr. Hundley in his letter of defense as introduced by him in the legislature in 1892-93, wherein he lays great stress on the language 'may be applied, etc.'" Your committee is advised that the supreme court of Alabama has uniformly held that the word "may" in a statute relating to the discharge of official duties has been construed to mean "shall." The record shows that this joint resolution was submitted to the voters of Alabama and was defeated. The next session of the Alabama senate following its defeat at the polls Mr. Hundley again introduced in the State senate this joint resolution. He would escape if he could the effects of this record. We have presented the facts arising in the hearing of the case to show that Mr. Hundley, whenever the opportunity presents itself and his interests are involved, never fails to evade the truth. This is not the character of man that should be Federal judge. Is it possible that a man around whose name and life the gravest doubts gather and cling as to his sincerity, truth, and proper conception of propriety should be elevated to the bench? We beg leave in this connection to quote with our approval the closing paragraph of the report written by the late Senator Pettus:

The evidence presented to your committee fails to present to us Mr. Hundley as a man of high character and credit with those who know him. It is hard for us to see how any other conclusion than this can be reached after a full, fair, and dispassionate

examination of all the evidence before us. We believe that the Government ought to be represented, at least in its important judicial positions, by men of character, integrity, honor, and capacity—a man entitled to, and who enjoys, the confidence and respect of those who know him best. Your committee is of the opinion that Mr. Hundley falls far short of that standard, and we do not believe under the circumstances that he is worthy of holding a high and important Federal office. Republicans of this kind can be found in Alabama. We respectfully report to the Senate against his confirmation as United States district attorney for the northern district of Alabama.

It is more to the interest of the people that a man proposed for judge should be honest, manly, and truthful—in short, that he should be possessed of integrity—than that he should have a profound knowledge of the law. While we do not concede that Judge Hundley is well equipped by a knowledge of the law for the intelligent or best discharge of the duties of a judge, we do assert that the evidence in this case demonstrates that he is unfit and unworthy to be judge. We believe from all the testimony in this case, from our personal knowledge in part and from the character of the man, that he is not qualified or worthy to be judge.

In the ordinary affairs of life a man is judged by his character, by his daily "walk and conversation," and we submit that by this standard this man should be judged in this particular case. We believe we are warranted in saying that all the developments of this case show that Mr. Hundley has been guilty of doubtful, improper, and wrongful conduct; so doubtful, so improper, and so wrongful that he ought not to be confirmed. A close reading of this record will, we think, justify this statement. Moreover, the record shows that to questions propounded to him relative to his acts of doubtful or wrongful personal or judicial conduct he was disingenuous, evasive, and unreliable, and prompt, in other instances, to deny emphatically any statement of fact reflecting on his integrity where he believed his own answer could not be controverted.

He sought at all times during this hearing to obscure and mystify the real issue connected with his judicial conduct in the matter of the Southern Steel Company receivership. In this connection we quote from the record, page 331:

Senator KNOX. As I understand, there is no charge made against you involving the exercise improperly of judicial discretion in any matter connected with the case, except the matter of receivership?

Mr. HUNDLEY. That is all.

Senator KNOX. I think it would be just as well for you to get down to the facts.

Mr. HUNDLEY. Why I appointed these men?

Senator KNOX. Yes, instead of arguing it. I would like to hear what the facts are.

Ninth. In the appointment of receivers for the Southern Steel Company the action of Judge Hundley, we submit, clearly shows that he prostituted his position for the purpose of paying a political debt to Thompson and of aiding Thompson to discharge a financial obligation to Judge Hundley. In doing so he appointed a man, Thompson, who had no experience whatever in the management or operation of industries of the kind operated by the Southern Steel Company. For this additional reason we respectfully insist that Hundley should not be confirmed. If before his confirmation he would play his political and personal favorites, would he not, when securely fixed in his position, use his power as judge to advance other favorites even to the destruction of the rights of persons and *property*, that might be before his court or that he might, by use of *his power and discretion*, bring before his court? Even if it be true

that by calling in Mr. Bush the property of the Southern Steel Company was saved from wreck and ruin, that fact does not mitigate the offense of the judge in the appointment of Thompson and Chandler receivers with Adler at the beginning of the case.

What are some of the undisputed facts as to this branch of the case? The Southern Steel Company could not pay its debts and should have been and was finally adjudged a bankrupt. Two petitions were presented to Judge Hundley at chambers at Huntsville. One asked that the two Adlers be appointed receivers, and the other asked for the appointment of Ketig and Steiner. Neither petition asked for the appointment of Chandler or Thompson, and in fact, during the entire hearing of the receivership appointment matter there, neither Chandler nor Thompson was ever mentioned or discussed. Frank S. White & Son, lawyers at Birmingham, say that they probably suggested Thompson, but they were not attorneys for any of the petitioning creditors, nor were they present in person or in any other way at the hearing at Huntsville. At this hearing in Huntsville, Chandler, who lived at Birmingham, was present, at whose instance or by whose invitation it does not appear, and according to Hundley's testimony Chandler remained in the judge's chamber ten or fifteen minutes after the others who had discussed the matter with the judge had gone out. From the circumstances we think it can be justly inferred that Chandler was there at the judge's instance or request.

While Oberdorfer and Blackburn made some charge of collusion between the creditors whom Benners represented, the bankrupt and the Adlers, yet Hundley did not believe that charge, or else he would not, if an honest judge, have appointed one of the Adlers one of the receivers. If Hundley believed there was in fact a wrongful collusion, it was criminal in him to appoint either of the Adlers. That would have been especially true in this case, because he was, beyond question, appointing two men (Chandler and Thompson), without experience, and one (Adler) who had had large experience. Would it not have appeared necessarily that Adler would have had, if not the entire control, then, the active operation of the plants, and the whole fate of the company would have been placed in the hands of an alleged unworthy man and conspirator? Hundley's decree appointing the receivers contemplated the continued operation of the plant, and necessarily the operation would have had to have been continued by the receiver who was experienced in such work. This shows one of two things: Either that Hundley did not attach any importance to the charge of collusion, or else deliberately placed one of these who were in the alleged collusion in position where he could carry out, to some extent at least, the purposes of that collusion.

Judge Hundley in his decree (record, p. 29) insists and cites decisions, which he says sustain the view, that when the appointment of a receiver is brought about by the active interference and procurement of the bankrupt, the appointment should for that reason be disapproved or not made. If Judge Hundley thought this collusion existed, then, under his view of the law, it was certainly his plain duty to refuse to appoint either of the Adlers. He endeavors to avoid the force and effect of this proposition by stating (record, p. 615) that at the time of the appointment of the receivers it had not been proved to him that the Adlers were in collusion with the bank-

rupt. On page 614 of the record, referring to this same alleged collusion, Representatives Burnett asked this question:

But that was called to your attention, was it not, at the time of the original petition?

To this Judge Hundley responded:

Yes, but not particularly.

And just previous to this question Judge Hundley said (record, p. 614):

If that had been proven to me at the time of the original appointment, I should not even have appointed Edgar Adler.

In this statement he was endeavoring to justify the appointment of one of the men whom he had said he had found to be in the collusion. Again, see how he contradicts himself. On page 361 of the record, in regard to this very point, Senator Knox asked this question:

But my question was, what were the reasons assigned by the protestant why you should not appoint the Adlers? You say that in these communications which you received, they asked you not to appoint them. But what reason did they assign for asking you not to appoint them?

Mr. Hundley:

Because the Adlers desired to get control of the property for their own personal ends; that they had been in collusion with certain stockholders and they desired to use it for their own purposes; they desired to get charge of the property; and they had been in consultation with the bankrupt with a view of purchasing the plant; and they had agreed in advance that they should be receivers; and until they had a proper hearing upon that, that I ought not to appoint them.

This, he says, was called to his attention right at the time that the question of appointing the receivers was before him.

Again, if Thompson and Chandler were competent to carry on the operations of the plant, as Hundley's decree required, why did Thompson afterwards suggest and Hundley afterwards appoint Bush one of the receivers? Hundley stated in his testimony (Record, p. 621) that Thompson told him Bush had agreed to help them (the receivers) out. The appointment of Bush is proof, we think, that Hundley knew when he appointed Chandler and Thompson that they were incompetent. That they were incompetent is apparent from the testimony. The testimony shows that Thompson and Chandler had had no experience in this kind of business. The very character of the plants of the Southern Steel Company demanded the appointment of receivers who had the peculiar experience necessary for the operation and management of the kind of business or businesses in which the Southern Steel Company was engaged. The company had large steel plants at Ensley and at Gadsden, and in connection with them operated several iron furnaces, blooming mills, coal mines, iron-ore mines, railroad, and various other industries, about which Thompson and Chandler knew nothing.

Judge Hundley, on page 616 of the record, in reply to a question asked by Representative Burnett about Thompson's previous business career, said: "I do not know what he did; I was in Florida a good deal of the time." Here we find a judge appointing a man to take charge of vast properties, estimated to be worth twenty or twenty-five millions of dollars, about whose previous occupation the Judge, according to his own testimony, knew nothing; and with this

man the Judge appointed another man who had never had any experience, so far as the evidence shows, except the running of two little stores, and the third man whom Hundley said had been shown to be in collusion with the bankrupt and petitioning creditors. With this testimony can we reach any other conclusion than that Hundley in appointing Thompson was paying a political debt to Thompson and at the same time was trying to help Thompson discharge a financial debt which he owed him, Judge Hundley? If this be true, he is unfit and unworthy of a seat on the bench. If Judge Hundley did this, while having only a temporary appointment, what will he do if he should be confirmed and feel that only an impeachment could remove him?

Mr. Bush says that Chandler never visited the commissaries, so far as he knew, although the pretext of Hundley for appointing him was his, Chandler's, familiarity with such stores. The testimony, without conflict, shows that there was no necessity for any one to have special supervision over these. Mr. Bush also says that Thompson had nothing to do with the active management of any of the concerns or businesses of the Southern Steel Company, and, in fact, never went about any of the plants or industries. Can the fact, if it be a fact, that Bush managed the business, plants, or industries of the company so as to meet the approval of the creditors in any wise mitigate the recklessness and criminality of Hundley in his appointment of Thompson and Chandler?

Again, on page 22 of the record, Benners makes the statement that after this subcommittee was appointed, and, in fact, only ten days before Benners testified, Hundley tried to use his judicial position and power to browbeat Benners into whitewashing Hundley's character in this investigation. This is what Benners states: "Only ten days ago I went into his chamber to get an order in the case. Up to that time since the institution of this case he had not shown a disposition to consult my views, although I believe I may state that our firm represents directly and indirectly the great bulk of the parties in interest in the case. He received me very cordially and invited my views at length about the case. He finally turned to me and said, 'Have you anything to do with this fight that is being made on me?' I told him I had not. 'Well,' he said, 'if that is the case, I wish you would write me a letter saying that you have nothing to do with this fight and that you do not approve of it, and that you do approve of my conduct of this litigation.' I said, 'Judge Hundley, I am sorry, but I can not write that letter.' He then said, 'Well, I had supposed that as an officer of the court you would take pleasure in doing it.' He said, 'You know in any event, whether I am confirmed or not, I will be in office until March, 1909, and have the disposition of this litigation.'"

Benners further stated on page 33 of the record: "We were, as a matter of course, vitally interested in that proceedings. We represented the petitioning creditors, and the question was—although you would never gather it from the opinion—whether or not the corporation should be adjudged a bankrupt. Presumably, if we were successful in that petition, we would get a large fee as being the attorneys for the petitioning creditors who brought into court this fund. He then became somewhat agitated and said, 'Well, sir, it is a mere matter of taste. I thought you would take pleasure in

doing it. You can do it or not, just as you like.' I told him it was a fact that I had nothing to do with the fight that was being made against him; that I declined to do so; that the interests, if no other reason, which we represented, were so large that we could not afford to become entangled in any complication whatever with reference to the case. And with some embarrassment I left the room."

This part of the conversation Hundley denied, but as between Hundley and Benners, we believe the statement of Benners to be true and that of Hundley to be untrue. This belief is justified by the contradictions that Hundley makes all through his testimony, and by the further fact that Mr. Blackburn, a witness for Hundley, said on page 448 of the record, that Walker Percy and Augustus Benners (who compose Mr. Benners's firm) stand as high in character and professional integrity as any firm he could mention; and we are further justified by the further fact that we ourselves know Mr. Benners and his character and state on our knowledge of that character, which is good for truth and veracity and for probity, that no man at the Alabama bar stands higher. Besides, Benners is not interested and Hundley is interested, for on the result of this investigation depends his right to his seat on the bench which he now occupies. We say the same that we said of Benners is true of Mr. Hood and his testimony and standing as a lawyer and as a man. It will be observed that Mr. Hood in his testimony in no wise contradicts anything that Benners said, but on the contrary he corroborates some parts of Benners's testimony.

Another piece of evidence which shows Hundley's disregard of the truth occurs on page 27 of the record, where in his opinion and decree adjudging the steel company a bankrupt he says, near the middle of the page, "These receivers immediately took charge of the property of the bankrupt, secured such funds on receivers' certificates necessary to keep the plants of the Southern Steel Company in operation, which they continued to do so long as said operation proved profitable." This is just as much a solemn adjudication of facts as any other in the opinion, and yet it is absolutely untrue. The receivers did not use a dollar's worth of certificates to operate the plants. Mr. Bush, who was Hundley's witness, testified, record page 201, that there never arrived a time when it was necessary for the receivership to use its credit for the purpose of raising a dollar. Here the judge, in a decree and opinion promulgated after this subcommittee had been appointed and publicity given to that fact, states an untruth. In fact, it is apparent from the opinion itself that it was really prepared and intended to be used as an answer to this proceedings then pending before this subcommittee of the Senate.

Again, Judge Hundley, in his first examination (record, p. 358), in response to a question by Senator Knox, said that Benners, in presenting his petition for receiver, told him that the Adlers would furnish the money to operate the plant of the Southern Steel Company if they were appointed receivers. Afterwards (record, p. 561) Hundley endeavored to modify this statement by saying that Benners did not tell him that as representing the Adlers. He tried to reinforce this afterthought of his by quoting from the testimony of Benners on page 5 of the record, where Benners merely stated the ability and qualifications of the Adlers. Judge Hundley tried to *impress the committee* with the idea that Benners only asserted that

the Adlers were in a condition to finance the receivership, and that neither Benners nor anybody else claiming to represent the Adlers ever stated to him, Hundley, directly or indirectly, that they would in fact put up the money to finance the receivership. The Judge here again attempts to deceive the committee. If he had desired to be fair, he would have quoted the testimony of Benners on page 34 of the record, where Benners stated that he told the judge (in response to questions by Senator Bacon) that he was authorized to state to him, the judge, that the Adlers had the money themselves and desired to use it in financing the company on receivers' certificates in case they were appointed receivers. Nor was the judge fair enough to quote or refer to the statement of O. R. Hood, on page 71 of the record, to the effect that he, Hood, told the judge when the appointment of receivers was being discussed that he had the assurance "from the Adlers that they would put up from their own means the necessary funds to keep the plant in operation."

It was shown that for many reasons it was highly important that the plant of the company, or at least some parts of their industries, should be kept in operation. One reason was that they had a large force of skilled and other labor, which had been collected from various parts of the country at great expense, and that this would necessarily be scattered if the plants were shut down. It is also shown by Hood, by Adler, and by Schuler that several of the plants could have been operated at a profit if they had been kept running, and a large part of the labor kept employed. Another evidence of Hundley's double dealing with the committee is shown by the alleged resolution, which is set out in extenso in the testimony of Bush, indorsing the receivers, when in truth and in fact, and according to the testimony of Benners and Wood (Hundley's witness) only a brief oral resolution was adopted tendering the thanks of the creditors to the receivers. The pretended resolution was never considered or adopted, but was an afterthought written into the record of the matter at Birmingham for the purpose of attempting a benefit to Judge Hundley in this investigation before this subcommittee.

Again, the effort is made by Hundley to minimize the importance of the petition of Benners, upon the ground that he represented three creditors only. Benners shows by his testimony that he represented a much greater amount of indebtedness than that embraced in his petition, and other creditors besides those named therein. But in order to comply with the bankruptcy law it was not necessary to include this other indebtedness and these other creditors in his petition. At the creditors' meeting to select trustees, it will be seen, we think, that his firm represented more than three-fourths of the amount in value of the unsecured debts. The record shows that there were over two millions of dollars of these unsecured debts, and it will also be remembered that the bankruptcy proceedings were instituted by and on behalf of unsecured creditors. Some of these unsecured creditors came into the case after the receivers had been appointed. We think that this, together with the other facts in the case, shows that the creditors had confidence in the integrity and ability of Benners.

On the question of collusion between the creditors whom Benners represented and the bankrupt, the fact that the bankrupt wrote the letter asserting its inability to pay its debts and its willingness to be

adjudged a bankrupt is one of the ways provided for by the statute to secure a judgment of bankruptcy; and the further fact that a certain person or certain persons was or were satisfactory to both parties for receiver or receivers, where no advantage is sought to either party over other creditors, is not an improper collusion. On this question many authorities can be cited. We mention the following:

New York Metropolitan Railway Case, recently decided by the Supreme Court of the United States (In ms.).

In re C. Moench & Sons Co. (142 Fed. Rep., 965).

In re Duplex Radiator Company (142 Fed. Rep., 906).

So we contend that there was no collusion, such as should have prevented the appointment of both the Adlers as receivers, and that from Hundley's conduct, both at the time of the appointment of the receivers and subsequent thereto, that the alleged matter of collusion was a mere subterfuge resorted to by him to justify his action in appointing his political henchman and financial debtor.

The papers and records put in by Bush and Wood are irrelevant and could not have been introduced for any other purpose than to draw attention from the real issue in this phase of the case, which is, did Hundley appoint incompetent men receivers and did he do so for improper, unworthy, and ulterior reasons?

In conclusion, Senators, we ask a full consideration of all the documents and oral testimony bearing on the conduct and character of this man. From this evidence, together with what we say in our responsible place as Representatives in Congress, you can draw his true likeness and obtain a just estimate of him. The integrity of a judge should be beyond question. In writing of judges a wise man has said that "Above all things integrity is their portion and proper virtue." And again this philosopher said, "If any sue to be made judge, for my own part, I should suspect him, but if either directly or indirectly he should bargain for a place of judicature let him be rejected with shame." This man is lacking in candor, in truthfulness, in proper sense of honor, and in integrity; and we repeat that he is unfit and unworthy to be judge of the northern judicial district of Alabama. Therefore, we respectfully submit to your high and candid judgment that his nomination should be rejected.

With the greatest respect, we are

WILLIAM RICHARDSON.
J. L. BURNETT.
J. THOS. HEFLIN.
W. B. CRAIG.
HENRY D. CLAYTON.
A. A. WILEY.

WASHINGTON, D. C., *May 8, 1908.*

The following paper was filed with the committee:

"SENATORS: We beg to hand you herewith certified copy of order of Judge Hundley appointing his witness Oberdorfer receiver after he had testified here for Hundley; also certified copy of order of Judge Hundley appointing his witness Blackburn receiver after he had testified here for Hundley, and also certified copy of order by

Hundley allowing his witness Wood \$7,500 as special master after he had testified here for Hundley.

"Respectfully,

"WILLIAM RICHARDSON.

"JOHN L. BURNETT.

"H. D. CLAYTON.

"W. B. CRAIG.

"A. A. WILEY.

"J. THOS. HEFLIN.

Order appointing A. Leo Oberdorfer special master.

In the district court of the United States for the southern division of the northern district of Alabama. In the matter of Roy Armstrong Drug Company, bankrupt. Alleged bankrupts.

The petition of R. D. Burnett for a restraining order being presented to me and the same being duly verified, heard, and understood, the court is of the opinion that the petitioner, R. D. Burnett, is entitled to the relief prayed for.

It is therefore ordered, adjudged, and decreed that the receivers, H. M. Beck and H. T. Bradford, be, and they are hereby, commanded to abstain from selling or offering for sale the fixtures located in the storehouse occupied by Roy Armstrong Drug Company, and they, and each of them, are restrained and enjoined from executing the order of sale of said fixtures heretofore granted to them by the Hon. N. L. Steele, referee, until the further order of this court.

It is further ordered that the receivers appear before A. Leo Oberdorfer, as special master, on the 21st day of March, 1908, then and there to show cause, if any they have, why the prayer of the attached petition should not be granted, and why they, and the trustee hereafter to be elected, should not be permanently restrained from selling said fixtures and why the same should not be found to be subject to the lien of R. D. Burnett and the Roy Armstrong Drug Company, and the receivers and trustee decreed to have no title to said fixtures.

Done at chambers this the 14th day of March, 1908.

OSCAR R. HUNDLEY,
United States District Judge.

It is further ordered that a copy of said petition and the above order be served on H. M. Beck or H. T. Bradford at least five days before the 21st day of March, 1908, and M. M. Ullman is designated to serve said copy on said receivers.

OSCAR R. HUNDLEY,
United States District Judge.

It is further ordered and adjudged that the said A. Leo Oberdorfer is hereby appointed special master and authorized and directed to report his findings of law and fact in this matter to me.

Done at chambers this 14th day of March, 1908.

OSCAR R. HUNDLEY, *Judge.*

Filed March 14, 1908, 2.20 p. m. Chas. J. Allison, clerk.

A true copy:

[SEAL.]

CHAS. J. ALLISON,
Clerk United States Courts, Northern District of Alabama.

Order appointing Felix Blackburn special master.

In the district court of the United States for the southern division of the northern district of Alabama. In the matter of Prowell Hardware Company, bankrupt. In bankruptcy.

This cause coming on to be heard upon the petition of National Refrigerator and Butchers' Supply Company et al., praying the said cause, known as Prowell Hardware Company, pending in said court, be referred to a special master of this court, to

pass upon all questions of law and fact as are now raised or may be hereafter raised on the pleadings, and report upon the various questions presented to this court for its consideration:

It is hereby ordered, adjudged and decreed that Felix Blackburn be and he is hereby appointed special master in said cause, and he is hereby authorized to proceed as a court and to hear and determine all questions both of law and fact that are now or may hereafter be presented, and report his findings and doings in he premises to this court.

Done at chambers this March 14, 1908.

OSCAR R. HUNDLEY, *Judge.*

Filed March 12, 1908, 11.50 a. m. Chas. J. Allison, clerk.

A true copy:

[SEAL.]

CHAS. J. ALLISON,
Clerk United States Courts, Northern District of Alabama.

Order allowing compensation of Sterling A. Wood.

In the district court of the United States, northern district of Alabama, southern division. In re Southern Steel Company, bankrupt. No. 7977. In bankruptcy.

This matter coming on to be heard before me, on this the 7th day of March, 1908, upon the verified petition of Sterling A. Wood, the former special master in this cause, for compensation as such special master in said cause.

And the said petition having been referred to the court, the court proceeds to advise with counsel connected with the said cause, to examine the file in reference to the services of the said special master, and to the extent to which the same were rendered and in reference to the value of the said services to the said estate.

And after due and full examination of the said matter the court is of the opinion that the said special master is entitled to the relief prayed in his said petition, and the court proceeds to fix the compensation of the said special master at \$7,500; the same to include all expenses of office, clerk hire, and stenographer's fee rendered to the said estate during his incumbency of the said office.

It is therefore ordered, adjudged, and decreed that the receivers of the said estate do pay to the said Sterling A. Wood the sum of \$7,500, in full compensation for the services rendered by him to the said estate as such special master, and in lieu of all expenses incurred by him for office rent, clerk hire, and stenographer's fees during the time which he held the said office, and the receivers will file his receipt for the same as their voucher for such payment.

It is further ordered, adjudged, and decreed that upon the payment of said sum of \$7,500, and upon compliance with the former orders of this court and of the referee thereof, the receivers shall pay over to the trustees the balance of the funds of the estate which may be in their hands as such receivers, and upon such payment to the trustees the said receivers are discharged.

Done in chambers, in the city of Birmingham, this the 7th day of March, 1908.

OSCAR R. HUNDLEY,
United States District Judge.

Indorsed: Filed March 10, 1908, 10 a. m. Chas. J. Allison, clerk.

A true copy:

[SEAL]

CHAS. J. ALLISON,
Clerk United States District Court, Northern District of Alabama.

HUNTSVILLE, ALA., October 16, 1907.

HON. CHARLES J. BONAPARTE,
Attorney-General, Washington, D. C.

MY DEAR GENERAL BONAPARTE: I am inclosing you herewith a formal letter to which I have attached the original Parker letter for you to file with my other papers in your Department. When I first wrote you about this matter I could not recall exactly who it was who sent the indorsement to me through the mail, but Mr. Sutterer, hearing that Congressman Richardson was writing around endeavoring to get up such letters of denial as Parker wrote to the President, to use against my confirmation, advised me of the fact. I then called Sutterer to Birmingham and showed him the original Parker letter with the result as indorsed thereon. In addition to this, I have shown Parker's

letter to various persons familiar with his handwriting, by whom I can prove, were it necessary, that the letter is in his own handwriting.

I am inclosing you herewith also a copy of the Birmingham Age-Herald showing the action of the bench and bar of my district urging my confirmation. I think it is with pardonable pride that I direct your attention to this matter, and you will doubtless be surprised to learn that the same parties who came to your office the day before I was appointed judge to protest against my appointment and lodged with you the slander about my owing a gambling debt are now among the number urging my confirmation. Two of these parties, Mr. Stallings and Mr. King, came to me while in Birmingham and stated that they were ready at any time to go in person to the Judiciary Committee and urge my confirmation, stating that I had made the best Federal judge ever on the bench in this district. I attribute this conversion of my enemies to my standard to the fact that since I have been upon the bench I have endeavored to do my whole duty to the best of my ability, without regard to personal or political conditions. This course shall be my rule of conduct so long as I remain upon the bench.

With assurances of my regard, I beg to remain,

Very sincerely, yours,

OSCAR R. HUNDLEY.

P. S.—You will find in the file two letters from William Richardson written to the President protesting against my appointment.

HUNTSVILLE, ALA., *October 16, 1907.*

The ATTORNEY-GENERAL,
Washington, D. C.

SIR: Referring to your letter of July 9, inclosing me copy of the letter of M. F. Parker to the President, of date July 28, 1907, denying that he had written any letter indorsing me for district judge, I beg to return you herewith the original letter written by Parker, which was sent me from the files in your Department. This letter of indorsement was sent to me through the mails and forwarded by me to the President with other indorsements. The letter was sent to me by Mr. John Sutterer, a prominent merchant residing in Cullman, Ala., and who has known Parker for many years. Mr. Sutterer came to my chambers in Birmingham and I showed him the original Parker letter, upon which he has made an indorsement which speaks for itself.

Parker never sought to deny his indorsement of me until two months after the list furnished the press by the President was published, and not until he had requested me to appoint him United States commissioner and I had refused to do so. I attach a letter from my former secretary, Mr. J. Wright Thompson, who heard the conversation between Parker and me in reference to the appointment.

This is a fair sample of the methods used by various politicians in this State to encompass my defeat for political reasons. Congressman William Richardson especially has been very active in this regard, writing to various parties whose names were published as among my indorsers, asking if they had indorsed me, his purpose being, no doubt, to secure from them such denials as that made by Parker.

With great respect, I beg to remain, yours, truly,

OSCAR R. HUNDLEY.

CULLMAN, ALA., *January 8, 1906.*

To His Excellency THEODORE ROOSEVELT,

Washington, D. C.

SIR: It affords me great pleasure to indorse Hon. Oscar Hundley, of Huntsville, Ala., for the appointment of United States district judge for northern district of Alabama. Oscar Hundley is an able attorney at law, and his appointment will give general satisfaction and reflect credit upon the Administration.

Respectfully,

M. F. PARKER.

BIRMINGHAM, ALA., *October 10, 1907.*

To the PRESIDENT:

The above letter was written and handed to me by the writer, Mr. M. F. Parker, and is in his own handwriting, with which I am familiar. I am also familiar with his signature. The above letter, with others, was sent by me by mail to Judge Hundley about the time it bears date.

Most respectfully,

JOHN SUTTERER.

HUNTSVILLE, ALA., July 16, 1907.

HON. OSCAR R. HUNDLEY, *Huntsville, Ala.*

DEAR SIR: You asked me to state to you my recollection of what occurred between a Mr. Parker and yourself, when he called at your judicial chambers in Birmingham during recess hour on or about the 26th or 27th of June, 1907, last.

I was acting as your private secretary at the time, and was in the room adjoining your room, which I used as an office, and heard the conversation, or part of it, between you and Mr. Parker, and while I am unable to detail it, the conversation was in reference to an appointment, which it seemed Mr. Parker wanted you to give him, but which you, in very strong and emphatic language, declined to do.

Very truly, yours,

J. WRIGHT THOMPSON.

DEPARTMENT OF JUSTICE,
October 18, 1907.

HON. OSCAR R. HUNDLEY,
United States District Judge, Huntsville, Ala.

MY DEAR JUDGE: I am duly in receipt of your letter of the 16th instant, with inclosures, in reference to the indorsement of your appointment as United States judge by M. F. Parker, which was on file in this Department. I have noted carefully what you say in both your formal letter and your personal letter to me, and do not see that any further action is required than to direct the papers to be placed on file for such reference as may be necessary in the future.

Yours, very truly,

Attorney-General.

ADDITIONAL INDORSEMENTS OF OSCAR R. HUNDLEY FOR APPOINTMENT AS UNITED STATES DISTRICT JUDGE.

Letters from—

M. R. Campbell, manufacturer, Tullahoma, Ala.

T. G. Bush, Birmingham, Ala.

Joseph A. Thompson, Birmingham, Ala.

Walter K. McAdory, clerk circuit court, Birmingham, Ala.

J. T. Glover and seven other members of Jefferson County Bar Association, Ala.

J. E. Shelby, president Birmingham Board of Trade.

Walker Percy, attorney Tennessee Coal, Iron and Railroad Company, Birmingham.

W. W. Crawford, president American Trust and Savings Bank, Birmingham.

W. P. G. Harding, president First National Bank, Birmingham.

Rufus N. Rhodes, Birmingham.

George M. Cruikshank, editor Ledger, Birmingham.

J. R. Carter, postmaster, Birmingham.

U. G. Mason, president Citizen's Club, Birmingham.

A. L. Brooks, ex-senator tenth senatorial district, Birmingham.

R. H. Pearson, attorney, Birmingham.

Charles H. Scott, member national committee, Alabama.

A. W. McKinney, Methodist minister, Birmingham.

Knox Booth, chairman Fifth Congressional Republican executive committee, Prattville, Ala.

Henry E. O'Grady, pastor Catholic Church, Prattville, Ala.

V. H. Tulane, grocer, Montgomery, Ala.

John M. Green, chairman, Republican executive committee, Second district of Alabama.

Ida O. Tillman, postmaster, Geneva, Ala.

W. R. Fairley, chairman Ninth Congressional district Alabama, Pratt City.

W. S. Mullins, State executive committeeman for Third Congressional district, Elba, Ala.

Richard B. Kelly, attorney, Birmingham.

B. S. Perdue, member Republican State executive committee, Greenville, Ala.

H. E. Berkestresser, Dadeville, Ala.

W. C. Starke, member State executive committee, Troy, Ala.

S. M. Murphy, chairman executive committee Third Congressional district, Eufaula, Ala.

C. M. Cox, member State executive committee, Ozark, Ala.

Henry F. Irwin, member Republican State executive committee, Montgomery, Ala.

Henry T. Nations, member Republican executive committee, Cordova, Ala.

Byron Trammell, member State Republican executive committee, Dothan, Ala.

GADSDEN, ALA., *December 16, 1907.*

HON. O. R. HUNDLEY, *Birmingham, Ala.*

MY DEAR SIR: Upon my return home I found your letter of the 12th instant, for which I thank you.

Upon investigation I find that I was mistaken in saying in my former letter that the paper here had taken a goodly portion of the article referred to from the Birmingham News. It seems that it was taken from the Birmingham Times.

In view of certain articles that have appeared in one or more of the Birmingham papers since writing you, I deem it proper to say to you that I have in no way had any connection with nor have I procured or suggested to anyone the publication of said articles, nor have I joined with others or made any effort whatever to defeat your confirmation. I did not know that such an effort was to be made until I read it in the Birmingham Age-Herald of Friday, I believe it was.

Persons have been to see me, both from Birmingham and elsewhere, some of whom you think are your friends, in an effort to induce me to join with them in making a fight on you. I have not only declined to join them, but I have declined to make any statement which would in the least reflect upon you.

I have known for some time that you had reasons for not appointing both of the Adlers as the sole receivers of the Southern Steel Company. Information has been conveyed to me that some one or more persons had protested against the appointment of both these men, charging that they had an ulterior motive in trying to be made receivers. If you believed, or even feared, that such was the case, no one could justly censure you in not appointing both of them as sole receivers.

I was exceedingly anxious about the personnel of the receivers for the reason that the stockholders had made known to me the fact that they intended to put the company back on its feet, if possible, settling in full with all the creditors as quickly as they could reasonably do so after the financial situation assumed a normal condition and the company had been adjudicated a bankrupt, when the creditors could contract with the company in settling their claims, but which can not be well done before the happening of that event. The stockholders were exceedingly anxious that the plants should all be kept in operation, so that the properties of the company and its business would be interfered with as little as possible at the time they were able to raise the money necessary to put the company back on its own feet. They have never for a moment considered that the company was insolvent or that creditors would have to resort to any harsh measures to collect their debts, but have all along intended, and do now intend, to put the company back on its feet as soon as they can do so; the present financial condition being considered.

The stockholders do not ask, and have never expected, that receivers would be appointed who would sacrifice the interests of creditors in serving them. The receivers have found it impracticable to operate the plants. So the thing for all to do now is to get the company back on its feet, which will necessitate a satisfactory settlement with the creditors. In making this effort, which will subserve the interest of all concerned, we feel that we have your unqualified support.

With sincere regards, I beg to remain,

Yours, very respectfully,

O. R. HOOD.

NEW ORLEANS, LA., *January 20, 1908.*

HON. A. O. BACON,

United States Senator, Washington, D. C.

MY DEAR SENATOR: I have been detained in Alabama by the illness of my mother, and on my return I find and have just read yours of the 8th instant, making inquiries as to my opinion of the fitness of Hon. Oscar R. Hundley for the office of United States judge.

I regret very much that I can not frankly and fully answer questions asked with such fairness and courtesy, but I would not like to express an opinion on the subject and request it to be held in confidence; and there are reasons, both official and personal, which would make it unpleasant, if not inappropriate, for me to express an opinion that would cause me to be quoted as either favoring or opposing the confirmation.

Any opinion I might give on the subject would be of weight only in proportion to the facts on which it was based, and I think it not improper for me to say that I know of no fact relevant to the inquiry that is not well known to others whose evidence is accessible to the Judiciary Committee.

Again regretting that my situation is such that I can not comply with your request, I beg to remain,

Yours, sincerely and respectfully,

DAVID D. SHELBY.

WASHINGTON, D. C., December 6, 1907.

HON. CLARENCE D. CLARK,

Chairman Judiciary Committee of the Senate.

SIR: We desire most respectfully, as Representatives from the State of Alabama in the Sixtieth Congress, to submit to you and the members of the Judiciary Committee of the Senate our earnest protest against the confirmation of Hon. Oscar R. Hundley, who has been nominated by the President of the United States to be judge of the United States district court for the northern district of Alabama.

We call the attention of your honorable committee to the fact that our late distinguished and honorable Senators, Hon. John T. Morgan and Edmund W. Pettus, after a careful investigation of and having a personal acquaintance and knowledge of the character of Mr. Hundley and his personal standing at the bar, each objected to his confirmation and gave their reasons for the same.

It will be recalled that Senator Pettus was a member of the subcommittee of the Judiciary Committee of the Senate so appointed to investigate the papers submitted in the Hundley case.

We fully concur in the objections made by Senators Morgan and Pettus to the confirmation of Mr. Hundley, and we respectfully renew these objections and ask for the same a proper consideration at the hands of your honorable committee.

Respectfully,

WILLIAM RICHARDSON.
H. D. CLAYTON.
J. THOS. HEFLIN.
JNO. L. BURNETT.
R. P. HOBSON.
A. A. WILEY.
W. B. CRAIG.

A REPORT PREPARED BY SENATOR EDMUND W. PETTUS FOR HIMSELF AND ANOTHER MEMBER OF COMMITTEE ON THE NOMINATION OF HON. O. R. HUNDLEY FOR DISTRICT ATTORNEY.

The committee, having inquired into the matter of the nomination by the President of the United States of Hon. Oscar R. Hundley, of Huntsville, Ala., as United States district attorney for the northern district of Alabama, respectfully report as follows:

We have carefully examined all the papers filed, consisting of letters, records, newspaper clippings, etc. Many documents have been filed on what is known and called "The Hundley school amendment," including a pamphlet entitled "Full explanation, etc.," in the form of letter from Oscar R. Hundley to the Judiciary Committee of the United States Senate, which pamphlet, or letter, is referred to as Exhibit A, and is attached to this report.

Before entering into the discussion or presentation of our views upon this "School amendment," we take the liberty of quoting from the message of the President of the United States to the two Houses of Congress, at the beginning of the second session of the Fifty-ninth Congress. On page 10 of said message he uses the following language:

"No more short-sighted policy can be imagined than in the fancied interests of one class to prevent the education of another class. The free public schools—the chance for each boy or girl to get a good elementary education—lie at the foundation of our whole political situation. In every community the poorest citizen, those who need the schools most, would be deprived of them if they only received school facilities proportioned to the taxes they paid. This is as true of one portion of our country as of another. It is as true for the negro as for the white man. The white man, if he is wise, will decline to allow the negro, in a mass, to grow to manhood or womanhood without education."

Indorsing, as the subcommittee does, the sentiments as above expressed by the President of the United States, your committee presents the following facts in connection

tion with the "Hundley school amendment." Mr. Hundley, in his letter to the Judiciary Committee, on page 3, uses the following language:

"It will be found by turning to page 177 of House Journal of 1888-89, that when on the 30th day of November, 1888, this bill was put upon its passage, Hon. Francis L. Pettus (son of Senator Edmund W. Pettus) offered and secured the adoption of the following amendment. I quote from the Journal:

"Mr. Pettus offered the following amendment: 'Add to the end of section 1, the following: *Provided*, That the money collected from persons of the white race shall be applied exclusively to the education of children of the white race, and the money collected from the persons of the black race shall be applied exclusively to the education of the children of the black race.'"

"This amendment was adopted, and the bill was thus amended, passed the House, and was sent to the Senate. I then followed in into the Senate and endeavored to have this amendment stricken from the bill, but without success, and the bill was defeated at that session of the Senate. After my election to the Alabama senate, I renewed my fight in the interest of local taxation for school funds, but finding a prevailing sentiment against the measure as originally proposed by me, unless accompanied by the 'Pettus amendment,' I introduced and secured the passage of a joint resolution in its present shape by unanimous vote of the senate. The resolution afterwards passed, the house, and will be found in the acts of the legislature of Alabama, 1892-93, pages 1215-1216. I direct your attention specially to the marked difference of the wording of the proviso as originally proposed by Mr. Pettus in the house and that of the proviso of the bill as it finally passed. The amendment proposed by Mr. Pettus, that the money collected from the white race *'shall be applied'* exclusively to the education of the white race, and the money collected from the black race *'shall be applied'* exclusively to the education of the children of the black race; whereas my bill as finally passed shows upon its face that the words *'shall be applied'* were abandoned and in their stead were placed the words *'may by law be applied'*, thus leaving it with the law-making power under the proposed constitutional amendment to provide for the distribution of the school funds derived from local taxation or not."

We have quoted at length from Mr. Hundley's explanation in order that this matter might be presented fully and fairly to the Senate. It can not be denied that the Pettus amendment, quoted by Mr. Hundley, restricts the education of the negro race to revenue derived alone from taxes collected from that race.

We respectfully submit to the Senate copies of a joint resolution, certified by Hon. E. R. McDavid, secretary of state, under the great seal of the State of Alabama, introduced by Oscar R. Hundley, representing the fourth senatorial district at the session of the Alabama legislature, 1890-91, marked Exhibit B.

Your committee points out in said joint resolution, proposing amendment to section 2 of article 11 of the constitution of the State of Alabama, providing for a special tax for school purposes, contains the following proviso: "*Provided*, That the money collected from persons of the white race shall be applied exclusively to the education of children of the white race, and the money collected from persons of the black race shall be applied exclusively to the education of children of the black race." It will be observed that the proviso is word for word the same as the Pettus amendment which Mr. Hundley says he so vigorously condemned. Your committee calls attention to the fact that the "Pettus amendment" was introduced on the day of November, 1888, and the "Hundley joint resolution" was introduced in the Alabama State senate by Mr. Hundley at the session of 1890-91.

It is also shown by said Exhibit A that the proviso in Mr. Hundley's joint resolution to restrict the education of the negro race to revenue derived alone from taxes from that race was, on motion of Senator Skeggs, stricken out, and that the whole joint resolution was finally tabled by Senator Wiley, who now represents on the floor of the House of Representatives in Congress the Montgomery, Ala., district.

The committee refers to a letter attached to said Exhibit B, written by Hon. Asa B. Stratton to Hon. Henry D. Clayton, a Representative in Congress from the State of Alabama, and asks its careful consideration. Mr. Stratton was the Republican candidate for governor of Alabama in the last November election. It is strange to your committee that Mr. Hundley, in presenting his defense against the charge of discrimination against the education of the negro, should have overlooked the joint resolution that he introduced in the Alabama legislature in 1890-91. Mr. Hundley's reference in his letter of explanation to the Judiciary Committee to the "Pettus amendment" is palpably misleading, and intended to mislead.

Exhibit A also contains a copy of the joint resolution referred to by Mr. Hundley in his letter of defense, as introduced by him in the legislature of 1892-93, wherein he lays great stress on the language "*may by law be applied*," etc. Your committee is advised that the supreme courts of Alabama, and other State and Federal courts, have uni-

formly held that the word "may" in a statute, relating to the discharge of official or public duties, has been construed to mean "shall." And your committee sees no difference in effect between the "Pettus amendment" of 1888 and the proviso of the "Hundley joint resolution" of 1892-93, as to limiting the education of the negro race to the taxes paid by them. Your committee, touching upon the matter of the construction of the joint resolution introduced by Mr. Hundley in the legislature of Alabama, 1892-93, begs leave to refer to the message from the governor of Alabama, Hon. Thomas Goode Jones (now United States district judge) to the general assembly of Alabama on the subject of Mr. Hundley's joint resolution, in which the governor says:

"I deem it my duty, however, to suggest that the proviso that the money collected from persons of the white race may by law be applied exclusively to the education of the children of the white race, and the money collected from persons of the colored race may by law be applied exclusively to the education of the children of the colored race" will in all probability result in the amendment being declared void by the courts, if adopted at the polls. * * * The Constitution of the United States, which is the supreme law of the land, forbids the benefit or protection of government from being apportioned on race lines; or accorded the races in proportion to their wealth or poverty; or of the amount of taxes which each race may pay. The State might as well attempt to declare that the courts shall be held open to adjust disputes between one race only, so long as money furnished by taxation of persons of that race would pay the expenses, as to attempt to declare that taxation, which is a political power to be used equally for the good of all without regard to race, should be so adjusted that persons of one race should receive far less benefit from the aggregate taxation, than persons of another race, simply because one race was poor and the other was not. I will not elaborate this question, which was discussed at length in the inaugural address which I had the honor to deliver to the general assembly on December 1, 1890."

This message of Governor Jones to the general assembly of Alabama is found in the senate journal, session of the legislature of Alabama, 1892-93, pages 463, 464, and 465 (marked "Exhibit C").

The committee calls attention to the letter of the Hon. Asa E. Stratton, addressed to the Hon. Clarence D. Clark, chairman Judiciary Committee, United States Senate, which is attached to and made a part of Exhibit C.

The joint resolution introduced by Mr. Hundley in the legislature of 1892-93 was passed and voted upon by the qualified electors of Alabama, at a general election held on August 6, 1894, and was defeated. All of which appears in the telegram of Thomas M. Owen, director archives and history, a copy of which is attached to Exhibit B.

Your committee upon further investigation ascertained that after said joint resolution had been defeated by the votes of the people, that Hon. O. R. Hundley, in the senate of Alabama, 1894-95, introduced the same joint resolution, which was defeated in the senate by failure to secure a two-thirds vote. Reference for a verification of these facts is made to the journal of the senate of Alabama, 1894-95, pages 9, 103, 113, and 164. It is then a matter of record that Mr. Hundley, in the Alabama senate, 1890-91, introduced a joint resolution to amend section 2, article 11, of the constitution of Alabama, which joint resolution provided: 'That the money collected from persons of the white race shall be applied exclusively to the education of children of the white race, and the money collected from the persons of the black race shall be applied exclusively to the education of children of the black race.' He introduced the same resolution, with a slight change of phraseology, in the legislature of 1892-93, and when the same was submitted to the qualified voters of Alabama, he urged its adoption on the stump, and after its defeat by the qualified voters at the polls, he again, in the legislature of 1894-95, introduced in the senate of Alabama the same joint resolution. Can it be said that anyone who would so persistently insist upon a measure, so unjust and so unfair to the helpless negro race, and manifestly unconstitutional, is a suitable and proper person to represent the Government of the United States in the high and responsible position as United States district attorney?

Your committee begs leave, after having presented Mr. Hundley's record as contained in the Alabama senate journals, to submit to the Senate facts, or charges of a personal character, filed for several weeks in this case, giving Mr. Hundley a full opportunity to deny the same.

An editorial of December 8, 1906, printed in the Daily Tribune, at Huntsville, Ala., where Mr. Hundley resides—a Republican paper, and for many years the official organ of the Republican party of Alabama—headed "*A plain sellout*," charging Mr. Hundley with conduct wholly unbecoming a gentleman or a good citizen.

Your committee, while not disposed to attach any importance to a newspaper article, feels constrained when the same matter referred to in the newspaper editorial is reiterated and denounced as "corruption" by leading Republicans claiming to be

cognizant of the facts. We attach as Exhibit D the editorial referred to in the Daily Tribune, the letter of the Hon. Chas. P. Lane, the editor of the Daily Tribune, and a letter of Hon. H. V. Cashin, who resides at Decatur, Ala., and who recently filled two terms as receiver of public moneys in the United States land office at Huntsville, Ala., as a Republican appointee, and the letter of Hon. Asa E. Stratton, addressed to Hon. Edmund W. Pettus, of date January 8, 1907. Mr. Cashin, in his letter referring to Mr. Hundley's conduct, uses this language: "which he acquired by the most corrupt methods."

These charges are reiterated in other letters attached to said exhibit. It appears to your committee that such charges coming from newspapers in a man's own town, as well as from others knowing Mr. Hundley, and being of such grave character, involving the integrity, character, and truth of a man, are entitled to some notice or answer or explanation, and especially if he is asking to be appointed to a high and responsible Federal office.

Your committee is impressed with the fact that the office of a United States district attorney is growing rapidly in importance, by reason of the complicated suits and litigations arising between the Government and the trusts, corporations, and combines, and the highest legal ability is required to discharge the duties of this office. It can hardly be claimed that a lawyer is well founded in the cardinal principles of law, or possessed of a high sense of justice, who would so persistently pursue such an erratic, unfair, and unconstitutional measure as this record shows Mr. Hundley did.

Your committee refers to a copy of the docket of the February term, 1907, of the circuit court of Madison County, Ala., Exhibit "E," filed in this case the 8th day of January, 1907, which discloses the following facts: That out of about 125 cases on the docket of the chief State court of the town of Mr. Hundley, the town in which Mr. Hundley lives and has practiced law for the past twenty years, that his name appears as counsel in but five cases. And your committee can not believe that Mr. Hundley's services as a lawyer are much sought after.

The evidence presented to your committee fails to present to us Mr. Hundley as a man of high character and credit with those who know him. It is hard for us to see how any other conclusion than this can be reached, after a full, fair, and dispassionate examination of all the evidence before us. We believe that the Government ought to be represented, at least in its important judicial positions, by men of character, integrity, honor, and capacity—a man entitled to and who enjoys the confidence and respect of those who know him best.

Your committee is of the opinion that Mr. Hundley falls far short of that standard, and we do not believe that under the circumstances he is worthy of holding a high and important Federal office; and we recommend that the Senate reject his confirmation as the United States district attorney for the northern district of Alabama.

Respectfully submitted.

SELMA, ALA., April 20, 1907.

Judge WILLIAM RICHARDSON,
Huntsville, Ala.

MY DEAR SIR: You are mistaken. That report never was made by any committee; it was prepared by two members of the committee and submitted to the chairman, but the chairman never acted on it. It never was reported by anybody and the committee never authorized it to be reported.

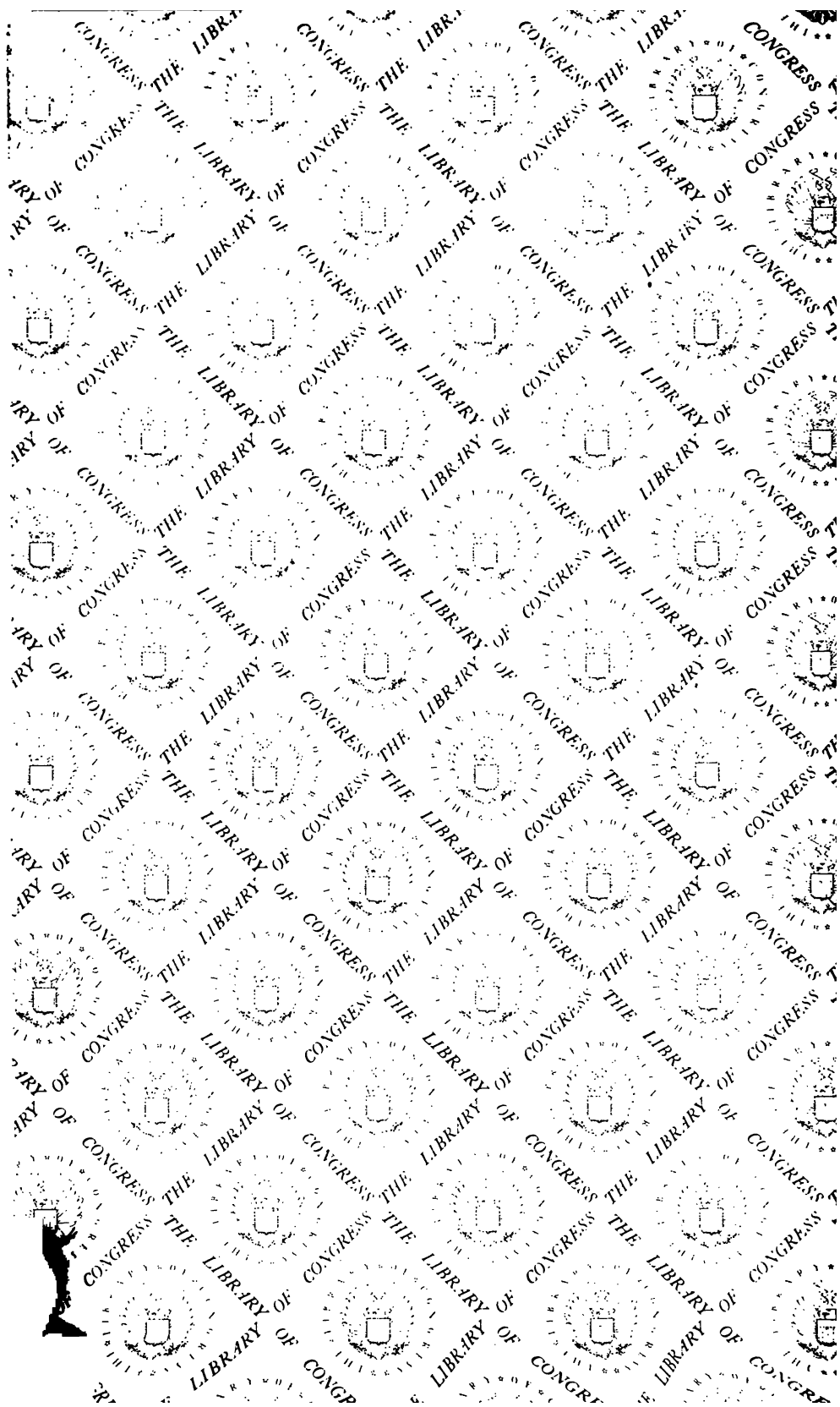
Most respectfully,

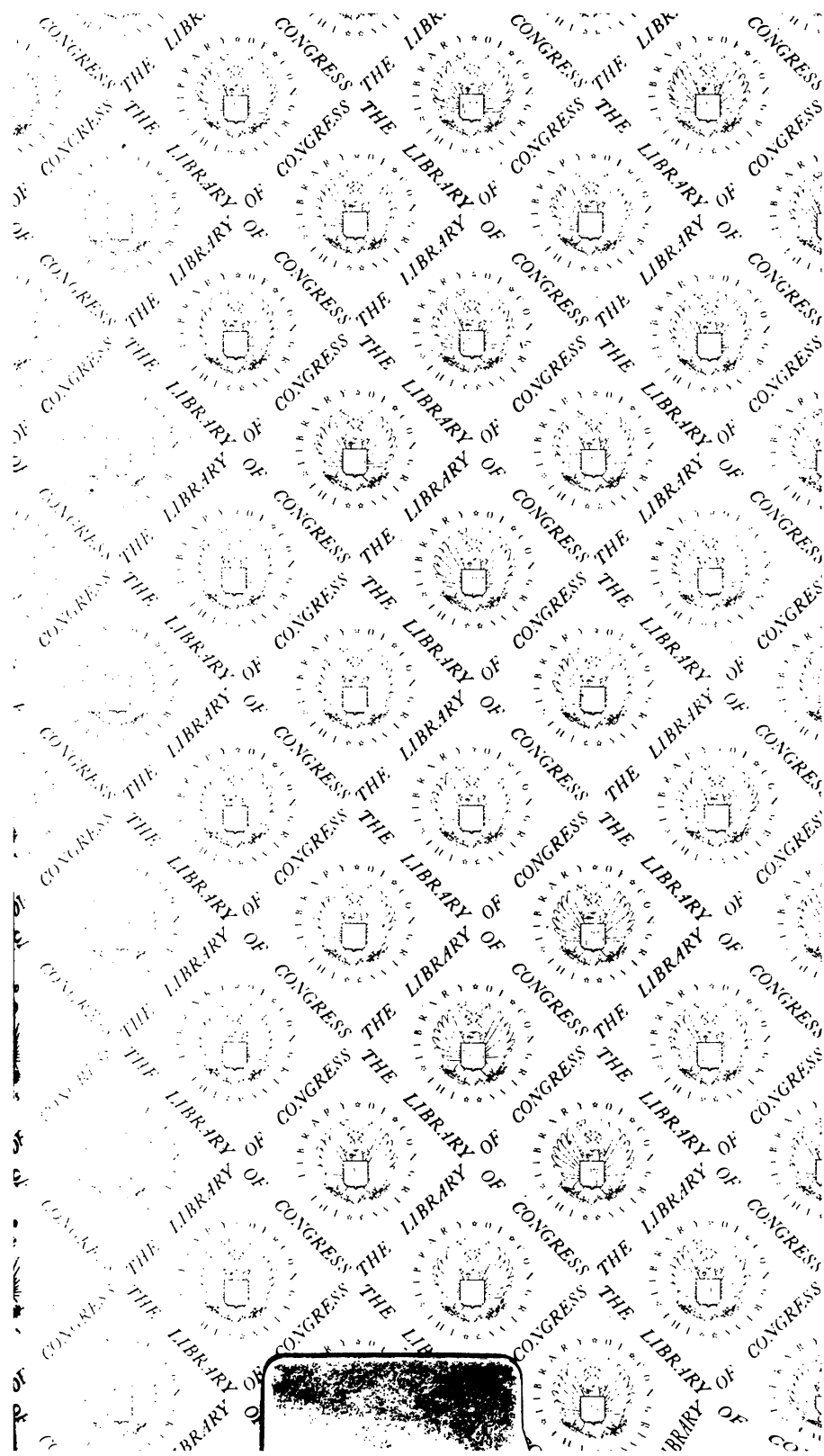
E. W. PETTUS.

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